The vote was taken by electronic device, and there were—ayes 179, noes 247, not voting 8, as follows:

[Roll No. 219]

AYES—179

Abercrombie	Furse	Neal
Ackerman	Gejdenson	Oberstar
Andrews	Gephardt	Obey
Baldacci	Gonzalez	Olver
Barcia	Gordon	Ortiz
Barrett (WI)	Green	Owens
Bateman	Gutierrez	Pallone
Becerra	Hall (OH)	Pastor
Beilenson	Harman	Payne (NJ)
Bentsen	Hastings (FL)	Peterson (FL)
Berman	Hefner	Poshard
Bevill	Hilliard	Rahall
Bishop	Hinchey	Reed
Bonior	Holden	Reynolds
Borski	Hoyer	Richardson
Boucher	Jackson-Lee	Rivers
Browder	Jefferson	Rose
Brown (CA)	Johnson (SD)	Roybal-Allard
Brown (FL)	Johnson, E.B.	Rush
Brown (OH)	Johnston	Sabo
Bryant (TX)	Kanjorski	Sanders
Cardin	Kaptur	Sawyer
Chapman	Kennedy (MA)	Schiff
Clay	Kennedy (RI)	Schroeder
Clayton	Kennelly	Schumer
Clyburn	Kildee	Scott
Coble	Kleczka	Serrano
Coleman	Klink	Skaggs
Collins (IL)	LaFalce	Skelton
Collins (MI)	Lantos	Slaughter
Conyers	Levin	Spratt
Costello	Lewis (GA)	Stark
Coyne	Lincoln	Stokes
Cramer	Lipinski	Studds
de la Garza	Lofgren	Stupak
DeFazio	Lowey	Tejeda
DeLauro	Luther	Thompson
Dellums	Maloney	Thornton
Deutsch	Manton	Thurman
Diaz-Balart	Markey	Torres
Dicks	Martinez	Torricelli
Dingell	Mascara	Towns
Dixon	Matsui	Traficant
Doggett	McCarthy	Tucker
Doyle	McDermott	Velazquez
Durbin	McHale	Vento
Engel	McKinney	Visclosky
English	McNulty	Volkmer
Eshoo	Meehan	Ward
Evans	Meek	Waters
Farr	Menendez	Watt (NC)
Fattah	Mfume	Waxman
Fazio	Miller (CA)	Williams
Fields (LA)	Mineta	Wilson
Filner	Minge	Wise
Flake	Mink	Woolsey
Foglietta	Moakley	Wyden
Ford	Morella	Wynn
Frank (MA)	Murtha	Yates
Frost	Nadler	

NOES—247

Allard	Calvert	Dreier
Archer	Camp	Duncan
Armey	Canady	Dunn
Bachus	Castle	Edwards
Baesler	Chabot	Ehlers
Baker (CA)	Chambliss	Ehrlich
Baker (LA)	Chenoweth	Emerson
Ballenger	Christensen	Ensign
Barr	Chrysler	Everett
Barrett (NE)	Clement	Ewing
Bartlett	Clinger	Fawell
Barton	Coburn	Fields (TX)
Bass	Collins (GA)	Flanagan
Bereuter	Combest	Foley
Bilbray	Condit	Forbes
Bilirakis	Cooley	Fowler
Bliley	Cox	Fox
Blute	Crane	Franks (CT)
Boehlert	Crapo	Franks (NJ)
Bonilla	Cremeans	Frelinghuysen
Bono	Cubin	Frisa
Brewster	Cunningham	Funderburk
Brownback	Danner	Gallegly
Bryant (TN)	Davis	Ganske
Bunn	Deal	Gekas
Bunning	DeLay	Geren
Burr	Dickey	Gilchrest
Burton	Dooley	Gillmor
Buyer	Doolittle	Gilman
Callahan	Dornan	Goodlatte
Goodling	Lucas	Salmon
Goss	Manzullo	Sanford
Graham	Martini	Saxton
Greenwood	McCollum	Scarborough
Gunderson	McDade	Schaefer
Gutknecht	McHugh	Seastrand
Hall (TX)	McInnis	Sensenbrenner
Hamilton	McIntosh	Shadegg
Hancock	McKeon	Shaw
Hansen	Metcalf	Shays
Hastert	Meyers	Shuster
Hastings (WA)	Mica	Sisisky
Hayes	Miller (FL)	Skeen
Hayworth	Molinari	Smith (MI)
Hefley	Mollohan	Smith (NJ)
Heineman	Montgomery	Smith (TX)
Herger	Moorhead	Smith (WA)
Hilleary	Moran	Solomon
Hobson	Myers	Souder
Hoekstra	Myrick	Spence
Hoke	Nethercutt	Stearns
Horn	Neumann	Stenholm
Hostettler	Ney	Stockman
Houghton	Norwood	Stump
Hunter	Nussle	Talent
Hutchinson	Orton	Tanner
Hyde	Oxley	Tate
Inglis	Packard	Tauzin
Jacobs	Parker	Taylor (MS)
Johnson (CT)	Paxon	Taylor (NC)
Johnson, Sam	Payne (VA)	Thomas
Jones	Peterson (MN)	Thornberry
Kasich	Petri	Tiahrt
Kelly	Pickett	Torkildsen
Kim	Pombo	Upton
King	Pomeroy	Vucanovich
Kingston	Porter	Waldholtz
Klug	Portman	Walker
Knollenberg	Pryce	Walsh
Kolbe	Quillen	Wamp
LaHood	Quinn	Weldon (FL)
Largent	Radanovich	Weldon (PA)
Latham	Ramstad	Weller
LaTourette	Regula	White
Laughlin	Riggs	Whitfield
Lazio	Roberts	Wicker
Leach	Roemer	Wolf
Lewis (CA)	Rogers	Young (AK)
Lewis (KY)	Rohrabacher	Young (FL)
Lightfoot	Ros-Lehtinen	Zeliff
Linder	Roth	Zimmer
Livingston	Roukema	
Longley	Royce	

NOT VOTING—8

Boehner	LoBiondo	Rangel
Gibbons	McCrery	Watts (OK)
Istook	Pelosi	

□ 1320

The Clerk announced the following pair:

On this vote:

Mr. Rangel, with Mr. Watts of Oklahoma for against.

Mr. CLEMENT changed his vote from ''aye'' to ''no.''

So the amendment was rejected.

The result of the vote was announced as above recorded.

PERSONAL EXPLANATION

Ms. PELOSI. Mr. Chairman, I was unavoidably absent for rollcall No. 219, the amendment offered by the gentlewoman from Colorado, Mrs. SCHROEDER. Had I been present I would have voted ''aye''.

I support the Schroeder amendment which would strike from the bill the section which abolishes joint and several liability and would modify the bill's cap on punitive damage.

As written, this bill will discriminate against women, children, and the elderly by placing greater value on economic losses over noneconomic losses. Similarly, placing a cap on punitive damages awards also discriminates against these groups.

Women, for example, will suffer because noneconomic losses such as reproductive capacity and physical disfigurement are much harder to qualify than annual earning capacity. In addition, women's earning capacity is historically and currently less than men and would be punished by this bill.

The Schroeder amendment acknowledges this legal discrimination and deserves our support.

The CHAIRMAN. It is now in order to consider amendment No. 3 printed in House Report 104–72.

AMENDMENT OFFERED BY MR. HYDE

Mr. HYDE. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. HYDE: Page 12, strike lines 8 through 11.

The CHAIRMAN. Pursuant to the rule, the gentleman from Illinois [Mr. HYDE] will be recognized for 10 minutes, and a Member opposed will be recognized for 10 minutes.

The Chair recognizes the gentleman from Illinois [Mr. HYDE].

Mr. HYDE. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, every State has statutes of limitation that prescribe the period of time within which a law must be brought. Similar but not identical is a statute of repose. Statutes of repose specify the period of time after which a manufacturer may not be sued for an alleged injury caused by its product. Consequently, a statute of limitations specifies when an existing right to bring a suit expires, while statutes of repose specify the period of time after which no right to sue will be recognized at all.

Seventeen States have enacted statutes of repose, but they vary in length and in their applicability to various products. A uniform statute of repose is needed in order to provide certainty and finality in commercial transactions. Section 108 of H.R. 956 would establish a 15-year Federal statute of repose in product liability cases. Thus, a product liability action against a manufacturer would be barred 15 years after the date of first delivery of the product.

To be fair to plaintiffs, the provision would not apply in instances involving a latent illness—a physical illness the evidence of which does not ordinarily appear less than 15 years after the first exposure to the product. In addition, the statute of repose does not bar a product liability action against a defendant who made an express warranty in writing as to the safety of the specific product involved where the express warranty given was longer than 15 years.

This legislation is similar to legislation that passed the Congress last year known as the General Aviation Revitalization Act of 1994 (Public Law 103–298). That Federal statute created an 18-year statute of repose for general aviation aircraft.

Section 108 is intended to reflect the view that, after a reasonable length of time, manufacturers should be free from the burden of disruptive litigation and potential liability. It recognizes that difficulty that exists in locating reliable evidence and defending claims many years after a product has been manufactured. It also prevents the unfairness that occurs when manufacturers are held liable for goods that have been beyond their control and subject to misuse or alteration, perhaps for decades. A statute of repose also helps to avoid the possibility of juries unfairly imposing current legal and technological standards on products manufactured many years prior to suit.

Even though manufacturers of older products frequently are successful in defense of these lawsuits they nevertheless must invest time and money into legal and transactional costs. These costs are wasted costs that could be better applied to create jobs and assist American companies in competing globally.

My amendment is aimed in ensuring that this statute of repose section does what it is intended to do. As part of the effort to combine the Judiciary Committee's legal standards bill with a product liability measure reported by the Commerce Committee, new language was inserted into the statute of repose section. It says ''(T)his subsection shall apply only if the court determines that the claimant has received or would be eligible to receive full compensation from any source for medical losses.'' Though unintended, this new language could effectively render the statute of repose provision useless.

My amendment is directed at deleting this one sentence because it would create a giant loophole for trial lawyers and would reverse the work of both committees in seeking a fair and effective statute of repose. Under the language I would strike, all a trial lawyer would have to show—to avoid the statute of repose—is that his client did not receive or was ineligible to receive full compensation for medical expenses. So, if there was any insurance copayment provision, if there was any insurance deductible, if reimbursed medical expenses are limited in any way, such as ordinarily and customary expense limitations—the statute of repose might not apply. Once the statute of repose is successfully evaded, a litigant could then seek additional economic damages, noneconomic damages and punitive damages. This is certainly not the result that the Judiciary Committee intended.

Unless this sentence is stricken, it will prompt further lawsuit abuse. Under this exception language, a manufacturer seeking to invoke the statute of repose would first have to litigate the issue of whether or not a claimant has received full compensation from medical losses. That is, has every medical test, prescription, bandage or Band-Aid been fully covered by insurance? This loophole would encourage a plaintiff to continue to claim medical expenses for as long as possible and to the maximum degree possible, so as to prevent full payment from triggering the statute of repose and its protections.

It is important to point out that the European Economic Community has a 10-year statute of repose with no such language contained within its provisions. Japan has a 10-year statute of repose with no such language. Again 17 States currently have statutes of repose, none has language like this in it. No such language was contained in the General Aviation Revitalization Act.

This language is an unwise, unfair and unworkable addition to an otherwise good strong and effective statute repose section. It must be removed if this House is to have the opportunity to vote for a statute of repose that really helps American manufacturers and encourages American productivity.

I strongly urge the adoption of my amendment. It will ensure that section 108 will be effective and provide manufacturers with the kind of certainty and finality that they deserve.

The CHAIRMAN. Is there a Member in opposition to the amendment?

Mr. BERMAN. Mr. Chairman, I rise in opposition to the amendment.

The CHAIRMAN. The gentleman from California is recognized for 10 minutes.

Mr. BERMAN. Mr. Chairman, I yield 1 minute to the gentleman from Virginia [Mr. SCOTT].

Mr. SCOTT. Mr. Chairman, will the chairman of the committee respond to a question? Mr. Chairman, I would ask, the language in the bill is changed in one of the sections. I ask a question during the hearings as to whether or not asbestos cases would be exempted from this bill. In committee I was told that asbestos cases would not be affected by the passage of this bill.

With the change and with this amendment, is that still the case?

Mr. HYDE. Mr. Chairman, if the gentleman will yield, this amendment does not change that.

Mr. SCOTT. So asbestos cases are not changed as a result either of the amendment or the passage of the bill?

Mr. HYDE. That is correct.

Mr. BERMAN. Mr. Chairman, I yield myself 2 minutes.

Mr. Chairman, we are dealing here probably with the only amendment I think on the status of repose. When I saw the language as it came out of the two committees and was reintroduced in this new bill, H.R. 1075, I said, well, this is not a bad effort. We are federalizing the product liability law in this one title. We will not even talk about what we are doing in the rest of the bill. We are providing the manufacturers with a certainty in terms of the amount of years. We are exempting it based on an amendment that the gentleman from Illinois, the chairman, accepted in committee for express warranties. If we could just get the Bryant amendment, to deal with a manufacturer who intentionally conceals problems with his product. We have a provision in the bill that says this subsection shall apply only if the court determines that the claimant has received or would be eligible to receive full compensation from any source for medical expense losses.

I thought with the addition of the Bryant amendment, which the Committee on Rules prevented him from offering, you could have a reasonable statute of repose as part of this federalization of the product liabilities scheme.

Lo and behold, the Committee on Rules does not grant Mr. BRYANT'S amendment, but instead grants an amendment that says when the person is injured by the defective product, if it occurs after the period of the statute of repose, even if he has no insurance, no other way of paying any of his medical bills, we are going to put him off on the county, put him into indigency, make him go on the dole in order to pay for the injuries which he suffered, which could be very extensive, because of this amendment.

□ 1330

What you looked like you were giving, you now, in substantial part, have taken away with this amendment. I think this is the wrong amendment. I am surprised that gentleman is offering it. It was a balance, it was a nice balance to the proposal. It is being totally thrown out of whack.

Mr. HYDE. Mr. Chairman, I yield myself 30 seconds.

I am equally surprised that the gentleman is opposing this amendment. The language I seek to strike was not in the bill in our committee. It was put in by the Committee on Commerce, and I think upon mature reflection it undoes the purpose of the statute of repose. It would leave it open-ended, almost impossible to predict or fulfill, and, therefore, if you are for a statute of repose, I should think you would be for having it a definite, time-certain.

Mr. BERMAN. Mr. Chairman, I yield myself 30 seconds.

Mr. Chairman, it is a balance. We are not talking about punitives. We are not talking about pain and suffering. We are not talking about wage loss. We are talking about the medical bills this injured person has to pay to get treatment. In this small set of cases, which side do we come down on? Do we come down on the manufacturer of the machinery, the product, or do we come down on the side of plaintiff who has no medical insurance, who has no way of paying his medical bills?

Mr. Chairman, I yield 3 minutes to the gentleman from Texas [Mr. BRYANT].

Mr. BRYANT of Texas. Mr. Chairman, a moment ago, the gentleman from Illinois [Mr. HYDE] talked about the European Community statute of repose. As always, the other side likes

to quote sources for their purposes but leave out the more relevant facts about the sources that might say something about the other side. The European Community provides cradle to grave medical care for all of its citizens. We do not do that in the United States. So the statute of repose which says that after 15 years you cannot sue somebody for making a defective product has a provision attached to it that says that does not count if the person would be made unable to get their medical care paid for.

Only if they have been able to cover their medical care does the manufacturer have a defective product escape liability 15 years after it is manufactured. It is a great irony. The gentleman from California [Mr. BERMAN] referred to it a moment ago. Of all things, we ask for time to offer amendments to make an extremely unreasonable bill a little more reasonable. They do not grant time on the reasonable amendments. They grant time to the chairman of the committee, who could have written the bill any way he wanted to, to make the bill worse for the average person.

A 15-year statute of repose is a new addition to American law. We have one reasonable exception in here. It does not stop a guy that manufactured a bad product that blew up and hurt somebody from being held liable unless the victim gets their medical care taken care of. The gentleman from Illinois [Mr. HYDE] would say, forget the victim. It does not matter whether he gets his medical care taken care of or not. After 15 years even if the product was totally defective, totally responsible for hurting or killing somebody, you are not going to be able to recover anything.

I think that is absurd. It is, in my view, completely opposite of what the American people would want us to be doing.

I had an amendment which was designed to make this statute of repose a little more workable and a little more reasonable. What it would have said is, OK, we have a 15-year statute of repose. At the end of 15 years, you cannot sue somebody even if their product is defective unless that person who made the product knew the product was defective at the time it was made. In that case, they do not get the benefit of the 15-year cutoff. But the Republicans would not let us offer that amendment today. Instead they let the gentleman from Illinois [Mr. HYDE] offer an amendment that says, too bad if you cannot cover you medical care. After 15 years, you are out of luck.

Unfortunately, for you so-called conservatives, you phony conservatives on the other side, what that is going to mean most of time is that taxpayers are going to have to pay for that guy's medical care while you let your rich friends off the hook.

Mr. HYDE. Mr. Chairman, I yield myself 1 minute. The gentleman objected last night to mentioning the American Trial Lawyers. You thought that was an invidious comparison. I did not yield to the gentleman. I did not yield to you.

The gentleman has no problem attacking us and linking us with rich friends and that sort of thing. The gentleman ought to do and practice what he preaches.

Mr. Chairman, I yield 2 minutes to the gentleman from California [Mr. MOORHEAD].

Mr. MOORHEAD. Mr. Chairman, I rise in support of the Hyde amendment. The statute of repose currently in H.R. 956 has been threatened by language that has been added to the bill after it left the Committee on the Judiciary that has created a giant loophole in the statute of repose. This one provision in the law says that unless, unless all possible damages or health care is met by the insurance policy or by the health care program, that the statute of repose will not be effective. There are no insurance policies that provide that kind of protection.

Certainly the Federal policies that many of us are under do not provide that kind of protection. It gives the trial lawyers a giant loophole that will enable them in almost every instance to open up the issue of whether the statute of repose is to be effective or not.

The loophole will prolong litigation because we will first have to try the issue of whether all the possible damages, health care needs have been met before we ever go on to the basic issue that is involved, the language that will destroy one of the major goals of the product liability reform legislation in having finality of an issue 15 years after the product was issued.

The Hyde amendment is supported by many national organizations. It is necessary to make this bill effective.

Mr. BERMAN. Mr. Chairman, I yield 3 minutes to the gentleman from Texas [Mr. DOGGETT].

Mr. DOGGETT. Mr. Chairman, there is considerable irony in the fact that the distinguished chair of the Committee on the Judiciary should lead off the presentation of this amendment by pointing to the example of what 17 States do with their statutes of repose, because the whole theory of this bill is to junk States' rights.

If the people in Illinois in their constitution want a statute of repose with or without this, I say that is fine. If the people in Texas want it, that is fine. It is not our job to come along and junk States' rights and say, you have to do it the way we say do it in Washington. That is what is the theory and the approach of this bill, is not to rely on the States but rather to consider and argue and to contend that we have this terrible patchwork of States' laws that pose a great burden.

There was a time in this country, my colleagues, when that terrible patchwork that is criticized here on this floor today was called something a little different. It was called the laboratory of democracy, the fact that each State might look at the laws of its civil justice system and decide what is most appropriate. And it is that laboratory of democracy with reference to our State civil justice system that is being thrown out the window of this capitol building by this piece of legislation.

There is a second problem, of course, alluded to by my friend, the gentleman from Texas [Mr. BRYANT]. And that is that this amendment takes a blame the victim approach. The problem here with this whole statute of repose is that it allows every manufacturer in America, and that is really all that the section does, to write on its product after 15 years, do not look to us, buddy. It says, we will not be responsible no matter how defective our product for anything after 15 years.

And that would be fine and proper, except for the fact that they allow the manufacturer to do that in invisible ink. The same manufacturer can advertise on the Home Shopping Network this afternoon that you get a lifetime guarantee with our product. Indeed, you do. It is just that you do not get any right to recover after 15 years. So there is no burden placed on the manufacturer to identify the fact that in invisible ink we have limited the rights of the victim.

I say blame the victim because the choice with this specific amendment is between those who put defective products in the stream of commerce throughout this country and those who do not have the insurance even to cover their own medical bills, because that is what this very good language took care of.

One of the problems in the consideration of this entire week's legislative work in this Capitol is our failure to listen to the victims, to the people that have lost life and their family, a limb, those people have been excluded in this debate.

The CHAIRMAN. The gentleman from California [Mr. BERMAN] has 30 seconds remaining, and the gentleman from Illinois [Mr. HYDE] has the right to close debate.

Mr. HYDE. Mr. Chairman, I yield 30 seconds to the gentleman from Ohio [Mr. OXLEY].

Mr. OXLEY. Let me respond, first of all, there is an expressed warranty provision in that that would cover the situation the gentleman mentioned. Let me say to my colleagues that when working on the statute of repose, we were looking for a particular length of time for the statute of repose. we found, to our amazement, that the longest statute of repose of any State is the State of Texas, the Lone Start State. And basically the statute of repose that is in this statute or in this bill copies almost word for word the Texas statute.

Mr. BERMAN. Mr. Chairman, I yield myself the balance of my time.

Let the body just remember, the product liability bill that the Committee on Energy and Commerce over several years has been passing and promoting on a bipartisan basis, the one that the gentleman from Ohio [Mr. OXLEY] always supported, was a product liability bill limiting the statute of repose to capital goods and providing 25 years. This is any product, any manufactured product, any manufactured product 15 years. And now you are taking out the medical benefit.

Mr. CHAIRMAN. All time in opposition to the amendment has expired. The Chair recognizes the gentleman from Illinois [Mr. HYDE].

Mr. HYDE. Mr. Chairman, I yield such time as me may consume to the gentleman from Wisconsin [Mr. SENSENBRENNER], a member of the committee, to close debate.

Mr. SENSENBRENNER. Mr. Chairman, I think to close debate it is important for us to focus on what a statute of repose is. A statute of repose is a limit during which period a lawsuit can be filed alleging negligence in the manufacture of that product.

The statute of repose here that is proposed is 15 years. That means that the product will have to be on the market and be used for 15 years, during which period of time a lawsuit can be filed and the manufacturer exposes himself to liability.

Is not 15 years long enough? If the product is defective, should not that defect become apparent within a 15-year period of time? I think the answer to that question is yes.

The gentleman from Ohio [Mr. OXLEY] has correctly stated that the 15-year statute of repose that is proposed in this bill is the longest of the State statutes of repose. So by federalizing this issue, we are in effect extending the time for which lawsuits can be filed in most States.

The amendment that the gentleman from Illinois is proposing is one that is very important, and that is taking out this last sentence, which was put in the statute of repose section by mistake, that says that if there is a penny of copayment or a penny of a deductible, then there is no statute of repose whatsoever, no limitation on when the lawsuit can be brought.

□ 1345

That will mean much higher product liability insurance premiums that manufacturers will have to pay. Who pays those product liability insurance premiums? We all do, as consumers, because those premiums are a cost of doing business. They are folded into the cost of the product.

By passing this amendment and establishing a standard of repose, we can lower those premiums, and thus lower the cost to our constituents. I urge an ''aye'' vote.

The CHAIRMAN. All time has expired.

The question is on the amendment offered by the gentleman from Illinois [Mr. HYDE].

The amendment was agreed to.

The CHAIRMAN. It is now in order to consider amendment No. 4 printed in House Report 104–72.

AMENDMENT OFFERED BY MR. SCHUMER

Mr. SCHUMER. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. SCHUMER: Page 13, redesignate section 110 as 111 and insert after line 3 the following:

SEC. 110. SUNSHINE, ANTI-SECRECY, CONSUMER EMPOWERMENT, AND LITIGATION AVOIDANCE.

(a) IN GENERAL.—To empower consumers with the information to avoid defective products, court records in all product liability actions are presumed to be open to the general public. No court order or opinion in the adjudication of a product liability action may be sealed. No court record, including records obtained through discovery, whether or not formally filed with the court, may be sealed, subjected to a protective order, or otherwise have access restricted except through a court order based upon particularized findings of fact that—

(1) such order would not restrict the disclosure of information which is relevant to public health or safety; or

(2)(A) the public interest in disclosure of potential health or safety hazards is clearly outweighed by a specific and substantial interest in maintaining the confidentiality of the information or records in question; and

(B) the requested order is no broader than necessary to protect the privacy interest asserted.

No such order shall continue in effect after the entry of final judgment or other final disposition, unless at or after such entry the court makes a separate particularized finding of fact that the requirements of paragraph (1) or (2) have been met.

(b) BURDEN.—The party who is the proponent for the entry of an order, as provided under subsection (a), shall have the burden of proof in obtaining such an order.

(c) AGREEMENT.—No agreement between or among parties in a product liability action filed in a State or Federal court may contain a provision that prohibits or otherwise restricts a party from disclosing any information relevant to such product liability action to any Federal or State agency with authority to enforce laws regulating an activity relating to such information.

(d) INTERVENTION.—Any person may intervene as a matter of right in a product liability action for the limited purpose of participating in proceedings considering limitation of access to records upon payment of the fee required for filing a plea in intervention.

The CHAIRMAN. Pursuant to the rule, the gentleman from New York [Mr. SCHUMER] and a Member opposed will each be recognized for 10 minutes.

The Chair assumes the gentleman from Illinois [Mr. HYDE] will manage the time in opposition to the amendment.

The Chair recognizes the gentleman from New York [Mr. SCHUMER].

Mr. SCHUMER. Mr. Chairman, I yield myself 3 minutes and 15 seconds.

Mr. Chairman, I have been so used to open rules that I have forgotten how a closed rule functions.

Mr. Chairman, if there ever was a commonsense legal reform, this amendment is it. Every year hundreds of manufacturers who know their products are dangerous hide behind court secrecy orders to conceal the truth from the American public.

As a result, thousands of innocent, men, women, and children are maimed, poisoned, injured, and even killed simply because they never learn the truth. The truth and their fates are sealed in secret by lawyers behind closed doors. In some cases, secrecy order follows secrecy order, year after year, while the list of mutilated and dead grows longer and longer.

Let me just give one case, because this has been so much a battle of the anecdotes, that shocked me. It ought to shock everybody.

There is no more innocent activity than little kids going out to play. Yet, for over 13 years, an equipment manufacturer of playground equipment sold a merry-go-round that it knew was causing serious injury to scores of small children, mostly around 5 or 7 years old, children like little Rebecca Walsh, who had two fingers chopped off; like Larry Espinosa and Dale Lukens, whose bones were crushed; other children who had their hands and feet cut off. These kids were hurt and their lives forever twisted.

In spite of dozens of lawsuits against the manufacturer, because those lawsuits were settled in secret, the parents of these kids never had a chance to protect their children, and their children never had a chance to grow up whole.

The sad truth is that the history of product liability litigation is full of cases like that.

Mr. Speaker, I do not know what goes on in the minds of the men and women who sell these products, even after they know they are killing and injuring innocent people, but I do know one way to stop it. That is to open up the courthouse doors and shine the bright light of day on these dangerous products. That is all this amendment does. I hope we could get bipartisan support it. It bars courts from sealing their orders in product liability cases. It prohibits any other record in a product liability case from being restricted, unless, and there is indeed an exception, the court specifically finds that the order will not restrict information relating to public health or safety, or that some specific secrecy interest clearly outweighs the public interest in disclosing public health and safety.

In other words, there can be sealed orders, but the burden of proof ought to be the other way. When health and safety are at stake, the burden of proof ought to be that the order be open.

Finally, Mr. Chairman, it permits product liability settlement agreements that restrict parties from giving information to regulatory agencies. This is real common sense. I urge my colleagues to vote for this amendment. It is a vote against secrecy, for openness, and for the right of all Americans to know the truth about dangerous products.

Mr. HYDE. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I think this is a very dangerous amendment. It is one that should be defeated. It would impair litigants' rights to maintain their privacy, protect valuable property interests, and interfere with settling legal disputes.

Massive amounts of private information are produced through the modern discovery process. The amendment requires the court to weigh the value of confidentiality versus the public interest in disclosure. To conduct such a weighing process on every document that is private would indeed weigh the courts down in endless disputes. Disputes over discovery issues would skyrocket, and further clog our courts.

The amendment would restrict judicial discretion in protecting confidential information, and would create lawsuit abuse, not eliminate it. The courts would have to conduct extensive and complex factual inquiries, which could include extensive hearings on and in camera review of thousands of documents. Such in camera review could result in an unfair and prejudicial prejudgment of the case.

This amendment would make it much more difficult to settle cases. It would prevent the mutual agreement between parties on issues of confidentiality, and would result in more contentious trials, consuming more time and attention than ever before.

There is no need for this amendment. The proponents of this amendment may trot out some tragic anecdotes allegedly supporting forced disclosure, but in each case the proponents of this amendment should be asked whether or not such information relating specifically to the alleged defect was not available to the public prior to the protective order, and in many cases, long before the lawsuits were even filed.

There is proprietary information, private information, information that does not belong in the public domain, and the judge now has ample authority to rule on whether this information shall be sealed or whether it should be made public. It is something that is best handled by court rules, not legislation.

Mr. Chairman, I do not know what else to call this but the Ralph Nader amendment, because it would permit any citizen at any time to intervene to get information that it wants, and that may or may not be helpful, but as a rule of law, it is the sort of thing that would obstruct the settlement of cases. It would make people very reluctant to disclose information on a nonconfidential basis.

I would sincerely hope that this gutting amendment would be defeated.

Mr. Chairman, this amendment represents a mischievous effort to compromise confidential information with potential adverse consequences for both businesses and injured parties. The amendment raises a new subject we did not consider in the Committee on the Judiciary.

The amendment can be interpreted as including a flat prohibition on sealing a court order or opinion in a product liability case. This prohibition—in contrast to the prohibition relating to a court record—apparently admits of no exception and may result in compromising trade secrets of American firms if the court order or opinion refers to such secrets.

By providing for public access to material obtained through discovery, we place in the public domain information that may have no relevance to pending litigation. The evidentiary standards for obtaining information through discovery are much broader than those applicable in a trial—a fact that renders inappropriate treating the discovery process like a public proceeding. The need to obtain a court order to restrict public access to records obtained through discovery can be expected to add immeasurably to the transaction costs of litigation—as parties go to court to safeguard the confidentiality of the discovery process. Alternatively, parties to litigation can be expected to resist discovery in order to keep irrelevant material from reaching the public domain. Efforts to avoid discovery or limit its scope may also add greatly to the transaction costs of litigation.

Providing that orders protecting confidentiality do not remain in effect after final disposition unless separate particularized findings are made by the court also complicates and prolongs the litigation process. Courts will be bogged down in considering such matters, and attorneys will invest considerable time and effort at additional costs to the litigants. Consumers will end up paying higher prices because of increased legal fees.

The amendment also discourages settlements by barring agreements between parties that purport to restrict disclosure of information to Government agencies.

Finally, this amendment adds to the costs of litigation—and exacerbates problems of delay—by allowing any person to intervene in a product liability action to participate in proceedings considering limitation of access to records. Although facilitating opportunities for some third parties to intervene in limited circumstances may be justifiable, the unlimited intervention mechanism this amendment establishes needlessly encumbers the litigation process.

Although I am committed to facilitating public access to relevant safety-related information, this shotgun approach to a complex subject is not the answer. Issues of confidentiality implicate not only the public's right to know but also the rights of victims to lead private lives and the rights of American corporations to protect proprietary information from foreign competitors; American jobs may depend on it.

Next week, the Judicial Conference of the United States will be considering proposed changes in rule 26(c) of the Federal Rules of Civil Procedure relating to protective orders. We should not precipitously preempt that process today.

I urge my colleagues to vote against this amendment.

Mr. Chairman, I reserve the balance of my time.

Mr. SCHUMER. Mr. Chairman, I yield 3 minutes to the gentlewoman from Illinois [Mrs. COLLINS], a coauthor of the amendment and ranking member of the former Committee on Government Operations, which is now the Committee on Government Reform and Oversight.

(Mrs. COLLINS of Illinois asked and was given permission to revise and extend her remarks.)

Mrs. COLLINS of Illinois. Mr. Chairman, one of the most questionable, if not unethical practices in product liability suits today is the use of court orders to bar public disclosure of manufacturer's information concerning product safety.

These orders result where, in a claim involving a defective product, the plaintiff's attorney, for example, needs documents and other evidence to establish a claim. Often, the manufacturer-defendant will seek a court order that requires the plaintiff, at the end of the case, to destroy or return to the manufacturer the evidence, without making it public. Since the plaintiff's attorney has a duty to protect the interests of his or her client—as opposed to those of the public at large—that attorney acquiesces to this request and agrees to seek the court order. The agreements are blessed by the court and then the documents are placed under confidential seal. Thus, access to product information comes at a heavy price.

In an interesting book describing litigation of asbestos cases, these bargaining tactics and their consequences that are harmful to the general public were graphically illustrated. After a Federal judge literally locked the lawyers in a room for 16 hours a day, 5 days a week, for 3 weeks, the parties agreed to a financial settlement of certain worker claims. In exchange, the plaintiff's attorneys agreed that whatever evidence they obtained from discovery could not be passed along to subsequent claimants. All papers were then sealed by the court.

One of the plaintiff's lawyers, acknowledging he had made a serious mistake in agreeing to the settlement terms, later said of the court's action:

> As a result, the disposition of Richard Gaze—a company physician—which provided powerful evidence of what the Pittsburgh Corning people really knew about asbestos disease, and when they knew it, remained under wraps for the next 5½ years.

Indeed, during that time period, the company denied to hundreds of claimants that it had any knowledge of this hazard until the mid-1960's, a contention that plaintiff's lawyers obviously could not rebut.

Unfortunately, this is not an isolated case. A serious design defect in the heating systems of Chevy Corvairs, first discovered in the mid-1960's, was not disclosed until 1971 because of a protective order. In another instance, involving the crash of several Pan Am 707's an attorney said that if certain in-house and FAA reports had not been sealed, ''no one would have ever gotten on a Pan Am plane again.'' Similar orders were also entered into in Dalkon Shield cases. The list goes on and on.

It is time we put a halt to these orders, Mr. Chairman. The Schumer-

Doggett-Collins amendment before you would do just that.

Our amendment would prevent the sealing of court records in all product liability actions, except under limited circumstances. Such court records could be sealed only through a court order in those instances in which, first, the order would not restrict the disclosure of information which is relevant to public health or safety, or second, the need to maintain confidentiality would substantially outweigh the public interest in disclosing potential health or safety hazards, and the order would be no broader than necessary to protect the privacy interest asserted.

The benefits of this amendment are numerous. First, it will promote greater public safety. If repeated litigation demonstrates that a product has a serious design flaw, or contains inadequate warnings, the public will be appraised of this information and can take appropriate action. Similarly, liberal disclosure will put pressure on a manufacturer to correct dangerous aspects of a product which might not be changed if the manufacturer could easily avoid the responsibility for its flaws.

The amendment will streamline the litigation process. Parties and courts involved in the trial of subsequent cases over the safety of a product will no longer face timeconsuming and costly discovery procedures. They will not have to re-create the same information or relocate identical documents, starting from scratch. Consequently, attorney's fees will be reduced, and the chose of whether or not to bring a product liability claim to court will not be based on the ability to afford one.

The backlog of cases often faced by courts would be reduced and fairer and more consistent verdicts may result since juries would have the same facts before them.

Mr. Chairman, this issue's importance is reflected by the American Bar Association's recommendations, stemming back to 1986, that courts allow disclosure of relevant product information. The Schumer-Doggett-Collins amendment offers many positive benefits to the public, foremost of which is enhancement of public safety.

I urge support for this amendment, Mr. Chairman. It is time we let the sun shine in on corporate secrecy.

Mr. HYDE. Mr. Chairman, I am pleased to yield 3 minutes to the gentleman from Wisconsin [Mr. SENSENBRENNER], a member of the committee.

Mr. SENSENBRENNER. Mr. Chairman, I would like to make two points. First, under the present procedure, whether or not court records are sealed is a matter of judicial discretion. I believe it ought to be kept that way. The judge who presided over the case, and assuming that there is a settlement offer that is coming before the court for approval, makes a determination on whether or not sealing the records is a reasonable request, and I think we ought to, in this instance, trust the judges to represent what is in the public interest.

This has to be done on a case-by-case basis. That is not to say that all records should be sealed, but it also is not to say that all records should be open, which is what the gentleman from New York is proposing.

The second problem with this amendment is, I think, what the gentleman from New York is trying to do is to do the work for lawyers in subsequent lawsuits on the same issue. Rather than doing their own discovery and findings out their own facts, they can simply go to the courthouse and rummage through the records that are already on file. Consequently, they end up not having to do as much work.

Mr. Chairman, we all know that most of these types of cases are taken on a contingency fee basis. By opening up the records and not having the lawyers do the work that they would have to do, they are going to end up spending less time, but their fees are not going to be reduced, because the fees are a certain percentage of the amount that is recovered.

For all these reasons, I think this amendment is a bad one, and ought to be defeated.

Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The gentleman yields back 1 minute to the gentleman from Illinois.

Mr. SCHUMER. Mr. Chairman, I yield the remainder of my time to the gentleman from Texas [Mr. DOGGETT], who has been a leader on this issue, and has provided invaluable help and assistance on this amendment.

The CHAIRMAN. Based on the 15 seconds consumed by the gentleman from New York [Mr. SCHUMER], the gentleman from Texas [Mr. DOGGETT] is recognized for 3¾ minutes.

Mr. DOGGETT. Mr. Chairman, the philosophy of this amendment is embodied in the first sentence, which is to empower individual consumers with the information to avoid defective products; court records in all product liability actions are presumed to be open.

The thrust of this amendment is that if we empower people to be responsible, to have the information to avoid defective products, they avoid litigation, and trial lawyers and all the problems that the authors of this legislation say their legislation is designed to resolve.

It is rather shocking to hear a series of contradictions from those who oppose the amendment. First they tell us that we should trust the judges. Mr. Chairman, if we trusted the judges of the 50 States, we would not be here this afternoon with this piece of legislation in the first place. The whole theory of House Resolution 1075 is that this body does not trust the judges of the 50 States, nor the 50 legislatures.

If we are going to address the problem as they see it, as they see fit to do it, why do we not try to do something constructive? That is what this amendment does. It says secrecy is not in the interests of the American people.

In fact, court records across this country, and this is not an anecdote, it is based on fact, court records across this country hide facts that literally kill and maim thousands of people in this country.

Two States have done something about it. The State of Florida passed a statute on the subject, and they have done a great deal to focus a little Florida sunshine, which is what we are trying to copy in this piece of legislation, so people are not deceived by facts that are sealed and hidden away in some dusty file drawer from the people that it could protect.

□ 1400

The second State is my own State of Texas, where we chose to do it by trusting the judges in a court rule of procedure to deal with this problem.

Of course what we do in this amendment does relate to court rules of procedure just as the rest of the bill does in dealing with bifurcation of punitive damages which is a rule of procedure that the majority has not the least bit of concern about interfering with the States on that.

The suggestion that this particular amendment would open all records belies the very words of the amendment. It does not do that. There are legitimate privacy interests in every lawsuit. There are legitimate trade secrets. All that we ask is that the better law of the Federal jurisdictions, the law that prevails I think in most Federal courts today, be codified in this statute as we are codifying other law, and require the trial judge to do what only judges can do if they act in their proper role, and, that is, to balance the interest. Is the public's interest in avoiding more deaths and more injuries? Does it outweigh whatever interest is claimed by the manufacturer?

Let me give Members some specific examples of where this kind of amendment, if it had been the law of this land, would have made the difference and would have prevented the destruction, interference and harm of thousands of lives.

One of these examples is the whole problem with breast implants. In 1984, 8 years before the major crisis over breast implants, there was information available concerning the danger of these implants and it was locked up in San Francisco in a vault, sealed in the first places of this litigation. That information could have been there so that those women avoided those breast implants in the first place. Instead, we have the literal and physical scars on many American women that would have never been there had they known the dangers that were locked up in those file drawers.

Another good example comes from the State of Florida, where it enacted this statute, where one pharmaceutical manufacturer of an arthritis medication actually convinced a court judge to prohibit any of the documents, not from being shared with Ralph Nader

but from being shared with the Federal Food and Drug Administration so that they could do something about it. Indeed, the Food and Drug Administration learned much of the problems with breast implants, not from anything filed there but from what was sealed and secreted away in that vault in San Francisco.

That is the kind of thing that is happening in this country ever single day where people come in with one price to settle a lawsuit if the documents are open and one price if they are sealed.

Of course the person who is facing large medical bills, a serious threat to their earnings stream, many times is encouraged to take the higher price. But somewhere in all this the public interest gets left out. The role that we could play is by empowering citizens across this country to protect their own interests by knowing of the dangers that they face in the marketplace, making an informed decision, not locking this away but opening it up.

I would trust the judge to use this statute as we propose it through this amendment to carefully balance the interest, but to assume and presume that this Government operates best when it operates in the sunshine, when it operates in the open. That is what this amendment is all about, against secrecy, in favor of empowering the people of this country to protect themselves.

It is incredible that it would not be accepted because it represents true commonsense legal reform.

Mr. HYDE. Mr. Chairman, I yield such time as he may consume to the distinguished gentleman from Ohio [Mr. OXLEY], and I ask that the gentleman yield to me briefly.

Mr. OXLEY. I yield to the gentleman from Illinois.

Mr. HYDE. I thank the gentleman for yielding. I would simply like to state the rule 26(c) of the Federal Rules of Civil Procedure has to do with protective orders and it provides the trial judge with authority in an appropriate case to seal documents or not to seal them. I prefer to leave it to the trial judge who is on the firing line and has the case before him or her and can make these decisions based on the type of case, the type of information, the demands of privacy, the embarrassment, the humiliation, the revelation of proprietary information or not. These are tough decisions, they are difficult decisions, and why should we make it for the judge and require the disclosure of these things?

I personally would like to know the formula for making Coca-Cola. I would suggest that has some monetary value. I would suggest the Coca-Cola people want to keep it quiet. In a lawsuit, why require its disclosure, if it is not essential to the litigation?

I yield to my friend, the gentlewoman from Chicago, IL.

Mrs. COLLINS of Illinois. I thank the gentleman for yielding. But, you know, if it were found that there was something in Coca-Cola that was killing folk, I certainly would want everybody to know about that.

Mr. HYDE. I certainly would expect our counsel or the plaintiff's counsel to urge the trial judge to disclose that if it was——

Mrs. COLLINS of Illinois. And I would urge them not to——

The CHAIRMAN. The Chair observes that the gentleman from Ohio [Mr. OXLEY] controls the time.

Mr. HYDE. The Chair is correct. I certainly should not have yielded, but she looked at me and I could not say no.

Mrs. COLLINS of Illinois. I know I have great charm. I thank the gentleman for recognizing it.

Mr. HYDE. I thank the gentleman for yielding.

Mr. OXLEY. Mr. Chairman, I had a judge tell me one time that a poorly settled lawsuit is much better than a well-tried one. I found in my experience that that was the case.

Indeed this provision, if it were to be adopted, the Schumer amendment, would clearly discourage the parties from considering whether that case should be settled. It seems to me that our public policy ought to be encouraging settlements, not discouraging settlements.

Judge Higginbotham, from the fifth circuit, testified on the Senate side as the chairman of the Advisory Committee on the Federal Rules of Practice and Procedure. He testified that his advisory committee had studied this particular idea and had found that no change was needed to the basic approach to the issuance and the use of protective orders.

In particular he stated that the results of these studies had shown that there was no need for these provisions and that they would create more burdensome and costly discovery as well as greater burdens on the court system.

Mr. Chairman, this amendment makes a mockery of our system of justice by allowing third-party special interests unlimited access to private corporate documents.

The gentleman previously had stated that one of the States that he pointed out that had changed the rules was Florida. In Florida, a trial lawyer recently testified that it has resulted in negative and confusing experiences that have discouraged out-of-court settlements.

I would suggest that the reason why 39 out of 41 State legislatures have rejected the type of change that the gentleman from New York would ask for is precisely because it would discourage the ability of companies and people involved in a lawsuit, to encourage them to come to a conclusion and to settle out of court.

I would think the gentleman from New York would want to have these kinds of settlements and not discourage those kind of settlements out of court and having to go to a trial and use up a lot of the resources of the court.

Mr. SCHUMER. Mr. Chairman, will the gentleman yield?

Mr. OXLEY. I yield to the gentleman from New York.

Mr. SCHUMER. I thank the gentleman for his courtesy in yielding.

Does the gentleman not think that if these records were opened, particularly in some of the egregious cases, it would actually reduce litigation because you would not have to go through the same discovery and the same process over and over and over again?

First it would reduce it in that people would not use the product, but second, once they did, it would greatly shorten whatever kind of trial time we would need. Why go over it 100 times?

The only other point I would make to the gentleman is that we are not opening all records. We are just changing the burden of proof when the health and safety, in effect changing the burden of proof when the health or safety of someone is at stake.

I await, I am sure, the gentleman's thoughtful and carefully considered answer.

Mr. OXLEY. Let me just simply respond by saying that Judge Higginbotham's advisory committee that did a serious study on exactly what the gentleman from New York would try to do came to the very solid conclusion as he testified in the other body that it would have a deleterious effect on the litigation system and it would in fact discourage out-of-court settlements. This is somebody who has studied the issue, who has been a Federal judge, a well-regarded Federal judge, and I think that we ought to take his advice very carefully, as well as the 39 out of the 41 States that have essentially rejected the gentleman from New York's recommendations.

The CHAIRMAN. The question is on the amendment offered by the gentleman from New York [Mr. SCHUMER].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. SCHUMER. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The CHAIRMAN. This will be a 17-minute vote.

The vote was taken by electronic device, and there were—ayes 184, noes 243, not voting 7, as follows:

[Roll No. 220]

AYES—184

Abercrombie	Browder	Costello
Ackerman	Brown (CA)	Coyne
Baldacci	Brown (FL)	Cramer
Barcia	Brown (OH)	Danner
Barrett (WI)	Bryant (TX)	de la Garza
Becerra	Bunn	DeFazio
Beilenson	Cardin	DeLauro
Bentsen	Chapman	Dellums
Berman	Clayton	Deutsch
Bevill	Clement	Dicks
Bishop	Clyburn	Dixon
Bonior	Coleman	Doggett
Borski	Collins (IL)	Dooley
Boucher	Collins (MI)	Doyle
Brewster	Conyers	Duncan

Durbin	Kleczka	Reynolds
Edwards	Klink	Richardson
Engel	Klug	Rivers
Eshoo	LaFalce	Rose
Evans	Lantos	Roybal-Allard
Farr	Lewis (GA)	Rush
Fattah	Lipinski	Sabo
Fazio	Lofgren	Sanders
Fields (LA)	Luther	Sawyer
Filner	Maloney	Schroeder
Flake	Manton	Schumer
Foglietta	Markey	Scott
Ford	Martinez	Serrano
Fox	Mascara	Skaggs
Frank (MA)	Matsui	Skelton
Frost	McCarthy	Slaughter
Furse	McDermott	Spratt
Gejdenson	McHale	Stark
Gephardt	McNulty	Stokes
Gibbons	Meehan	Studds
Gonzalez	Meek	Stupak
Gordon	Menendez	Tejeda
Graham	Mfume	Thompson
Green	Miller (CA)	Thornton
Gutierrez	Mineta	Thurman
Hall (OH)	Minge	Torres
Hamilton	Mink	Torricelli
Harman	Moakley	Towns
Hastings (FL)	Moran	Traficant
Hayes	Murtha	Tucker
Hefner	Nadler	Velazquez
Hilliard	Neal	Vento
Hinchey	Oberstar	Visclosky
Holden	Obey	Volkmer
Hoyer	Olver	Ward
Jackson-Lee	Ortiz	Waters
Jacobs	Owens	Watt (NC)
Jefferson	Pallone	Waxman
Johnson (SD)	Pastor	Williams
Johnson, E.B.	Payne (NJ)	Wilson
Johnston	Payne (VA)	Wise
Kanjorski	Pelosi	Woolsey
Kaptur	Peterson (FL)	Wyden
Kennedy (MA)	Pomeroy	Wynn
Kennedy (RI)	Poshard	Yates
Kennelly	Rahall	
Kildee	Reed	

NOES—243

Allard	Davis	Hobson
Archer	Deal	Hoekstra
Armey	DeLay	Hoke
Bachus	Diaz-Balart	Horn
Baesler	Dickey	Hostettler
Baker (CA)	Dingell	Houghton
Baker (LA)	Doolittle	Hunter
Ballenger	Dornan	Hutchinson
Barr	Dreier	Hyde
Barrett (NE)	Dunn	Inglis
Bartlett	Ehlers	Istook
Barton	Ehrlich	Johnson (CT)
Bass	Emerson	Johnson, Sam
Bateman	English	Jones
Bereuter	Ensign	Kasich
Bilbray	Everett	Kelly
Bilirakis	Ewing	Kim
Bliley	Fawell	King
Blute	Fields (TX)	Kingston
Boehlert	Flanagan	Knollenberg
Boehner	Foley	Kolbe
Bonilla	Forbes	LaHood
Bono	Fowler	Largent
Brownback	Franks (CT)	Latham
Bryant (TN)	Franks (NJ)	LaTourette
Bunning	Frelinghuysen	Laughlin
Burr	Frisa	Lazio
Burton	Funderburk	Leach
Buyer	Gallegly	Levin
Callahan	Ganske	Lewis (CA)
Calvert	Gekas	Lewis (KY)
Camp	Geren	Lightfoot
Canady	Gilchrest	Lincoln
Castle	Gillmor	Linder
Chabot	Gilman	Livingston
Chambliss	Goodlatte	Longley
Christensen	Goodling	Lucas
Chrysler	Goss	Manzullo
Clinger	Greenwood	Martini
Coble	Gunderson	McCollum
Coburn	Gutknecht	McCrery
Collins (GA)	Hall (TX)	McDade
Combest	Hancock	McHugh
Condit	Hansen	McInnis
Cooley	Hastert	McIntosh
Cox	Hastings (WA)	McKeon
Crane	Hayworth	Metcalf
Crapo	Hefley	Meyers
Cremeans	Heineman	Mica
Cubin	Herger	Miller (FL)
Cunningham	Hilleary	Molinari
Mollohan	Roemer	Stockman
Montgomery	Rogers	Stump
Moorhead	Rohrabacher	Talent
Morella	Ros-Lehtinen	Tanner
Myers	Roth	Tate
Myrick	Roukema	Tauzin
Nethercutt	Royce	Taylor (MS)
Neumann	Salmon	Taylor (NC)
Ney	Sanford	Thomas
Norwood	Saxton	Thornberry
Nussle	Scarborough	Tiahrt
Orton	Schaefer	Torkildsen
Oxley	Schiff	Upton
Packard	Seastrand	Vucanovich
Parker	Sensenbrenner	Waldholtz
Paxon	Shadegg	Walker
Peterson (MN)	Shaw	Walsh
Petri	Shays	Wamp
Pickett	Shuster	Watts (OK)
Pombo	Sisisky	Weldon (FL)
Porter	Skeen	Weldon (PA)
Portman	Smith (MI)	Weller
Pryce	Smith (NJ)	White
Quillen	Smith (TX)	Whitfield
Quinn	Smith (WA)	Wicker
Radanovich	Solomon	Wolf
Ramstad	Souder	Young (AK)
Regula	Spence	Young (FL)
Riggs	Stearns	Zeliff
Roberts	Stenholm	Zimmer

NOT VOTING—7

Andrews	LoBiondo	Rangel
Chenoweth	Lowey	
Clay	McKinney	

☐ 1428

Mr. BARTLETT of Maryland changed his vote from ''aye'' to ''no.''

So the amendment was rejected.

The result of the vote was announced as above recorded.

PERSONAL EXPLANATION

Mrs. LOWEY. Mr. Chairman, I unavoidably missed rollcall vote No. 220. Had I been there, I would have voted ''aye.''

The CHAIRMAN. It is now in order to consider amendment No. 5 printed in House Report 104–72.

AMENDMENT OFFERED BY MR. CONYERS

Mr. CONYERS. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. CONYERS: Page 13, redesignate section 110 as section 111, and insert after line 2 the following:

SEC. 110. FOREIGN PRODUCTS.

(a) GENERAL RULE.—In any product liability action for injury that was sustained in the United States and that relates to the purchase or use of a product manufactured outside the United States by a foreign manufacturer, the Federal court in which such action is brought shall have jurisdiction over such manufacturer if the manufacturer knew or reasonably should have known that the product would be imported for sale or use in the United States.

(b) ADMISSION.—If in any product liability action a foreign manufacturer of the product involved in such action fails to furnish any testimony, document, or other thing upon a duly issued discovery order by the court in such action, such failure shall be deemed an admission of any fact with respect to which the discovery order relates.

(c) PROCESS.—Process in an action described in subsection (a) may be served wherever the foreign manufacturer is located, has an agent, or transacts business.

The CHAIRMAN. Pursuant to the rule, the gentleman from Michigan [Mr. CONYERS] and a member opposed will each be recognized for 5 minutes.

The Chair recognizes the gentleman from Michigan [Mr. CONYERS].

☐ 1430

Mr. CONYERS. Mr. Chairman, this is a very important amendment. I apologize for having such little time.

This amendment makes sure that foreign manufacturers comply with the U.S. Court rules if they choose to have their goods sold in this country, and that includes discovery, which is one of the most important parts of court rules, if there is a lawsuit against a foreign manufacturer.

Our hearings revealed that many times our liability laws are of little use against foreign companies because it is so difficult to obtain jurisdiction over them and obtain discovery of the documents necessary to establish legal liability. And that is why within my 5 minutes I have asked the former chairman of the Committee on Energy and Commerce, the gentleman from Michigan [Mr. DINGELL], and the gentleman from Illinois [Mr. DURBIN] to share this time with me.

Mr. Chairman, I think my amendment will make sure that foreign firms can be brought to justice in this country just as American companies can be.

Mr. Chairman, I yield 2 minutes to the gentleman from Michigan [Mr. DINGELL].

Mr. DINGELL. I thank the gentleman for yielding this time to me.

Mr. Chairman, this is a fair amendment. It treats American corporations and foreign corporations in American courts exactly the same way. If you are interested in fairness, this is an amendment to vote for because it says foreign corporations must make the same disclosures in American courts under discovery process that must be made by American corporations.

If you are interested in competitiveness, this is an amendment on which you should vote. The argument for this legislation is that it is going to contribute to competitiveness. Well, if it is going to do so, it should do it fairly and completely. This says that foreigners do not get a greater advantage in dealing with American courts and American litigants than the foreign corporation. It says they have got to make the same discovery. Discovery is absolutely essential to the judicial process. Without fair discovery, there can be no fair judicial process, and without discovery in product liability suits, there can clearly be no discovery.

Without this amendment, what the bill will say is American corporations in court on product liability suits involving perhaps the same matter that might be involved with the litigation by a foreign corporation, have to disclose their whole case, but foreign corporations do not.

If you want American corporations to be competitive in a market in which foreigners sell better than $500 billion

worth of goods, my suggestion is that you should then vote for this amendment. It is fair, it protects American corporations, it contributes to competitiveness, and it is in the interest of the United States.

Vote for the Conyers amendment.

The CHAIRMAN. The Chair inquires, is there a Member who wishes to manage time in opposition to the amendment?

Mr. HYDE. I do, Mr. Chairman.

The CHAIRMAN. The distinguished gentleman from Illinois [Mr. HYDE], chairman on the Committee of the Judiciary, is recognized for 5 minutes.

Mr. HYDE. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I oppose the amendment offered by the gentleman from Michigan because it raises significant constitutional and international law questions, represents a serious potential irritant in our bilateral relations with other countries, and raises the specter of foreign retaliation against American firms. For the United States to take unilateral action that is likely to be perceived as overbearing in character and constituting an affront to other nations is shortsighted and counterproductive.

The due process clause of the fifth amendment and principles of international law are implicated when we purport to confer jurisdiction on a U.S. court over a foreign manufacturer based merely on the fact that the manufacturer knew or reasonably should have known that the product would be imported into the United States. The criteria for U.S. jurisdiction in the amendment would even embrace situations where a manufacturer might not want its product imported into this country but knew or reasonably should have known that that eventuality would materialize in spite of its wishes.

The extent to which American statutes apply to foreign nationals already is a point of contention in our relations with other countries. Prudence dictates that we proceed cautiously in this arena rather than act precipitously without adequate consideration. Although the author of this amendment offered another amendment in the Committee on the Judiciary markup relating to service of process on a foreign manufacturer, our committee did not have the opportunity to give any consideration to the proposal now presented to this body.

There are internationally recognized procedures for Americans, litigating matters in the United States, to obtain relevant information or material from foreign countries. These procedures involve going initially to an American court—with the discovery request eventually being presented to the appropriate foreign court.

Many countries react negatively to U.S. discovery procedures—and efforts to give extraterritorial effect to discovery orders of U.S. courts, by deeming failure to comply as an admission, fail to show appropriate deference to the sensibilities and prerogatives of other countries. Our own discovery practices have been subject to severe criticism even within the United States—and efforts to export them in circumvention of the courts of a foreign country are unjustified. The extent to which failure to furnish material is deemed an admission under proposed section 110(b) is overbroad, in any event, because the admission embraces any fact with respect to which the discovery order relates even though the testimony, document, or other thing that is sought may turn out to be irrelevant.

The potential for foreign retaliation cannot be overlooked when we contemplate the possibility of foreign countries taking the position that American firms must respond in foreign courts—under foreign law—when the particular product is sold or used there.

The new proposed section also raises significant interpretive problems when we try to give content to the term ''foreign manufacturer.'' U.S. manufacturers, for example, often have affiliates in other countries that manufacture component parts. The ambiguity of the reference to foreign manufacturer in proposed section 110 undoubtedly would precipitate much litigation.

It makes much more sense, in my judgment, to place primary emphasis in resolving this type of issue on international conventions and bilateral agreements. This body is not in a position today to contribute in a helpful way to addressing this subject.

I urge the defeat of the amendment.

Mr. CONYERS. Mr. Chairman, I yield myself 30 seconds.

Mr. Chairman, what we just heard explained as the reason for opposing this amendment is absolutely astonishing. We are saying we should not subject a foreign manufacturer to our legal process because of free trade considerations. Now, ladies and gentlemen, if we are prepared to say that they should have a more lenient way in our courts than our own manufacturers, I will be astounded to hear such a statement.

Mr. Chairman, I yield the balance of my time to the distinguished gentleman from Illinois [Mr. DURBIN].

Mr. DURBIN. I thank the gentleman for yielding this time to me.

Mr. Chairman, the position taken by the Republicans in opposition to the Conyers amendment is going to give free trade a bad name. If foreign corporations want to sell their products to Americans in America, they should be subject to our laws.

Consider this possibility: There is a collision in my hometown of Springfield between a car made in Detroit and one made in Tokyo. People are severely injured. There is a suspicion that one of these cars had some type of defect in its brakes, for example, but we are not sure which one. So the person who is injured goes to court and sues both the American car company and the Japanese car company. Guess what? You can discover all the documents in the world from the American car company to find out whether you have a claim. But as soon as you try to get the Japanese car makers to supply this information, they say, as the gentleman from Illinois [Mr. HYDE] said, ''No, no, no, it is a matter of international treaty. You can't find this out. You have to go to Tokyo.''

We bought the car in Springfield, but you have to go to Tokyo for discovery. Let me tell you what we are talking about here is concealment and evasion. If my colleagues want to get up here, wave their American flags, and vote ''Buy American'' day in and day out, for goodness sakes, take a look at what this amendment says. If foreign corporations want to sell products to American consumers, why in the world should they not comply with American law?

The CHAIRMAN. In order to close debate, the gentleman from Illinois [Mr. HYDE] is recognized for 1 minute.

Mr. HYDE. Mr. Chairman, this amendment is unfair, it violates due process by allowing suits against corporations that ''should have known'' their products would be sold in the United States. It violates the fundamental principles of fairness, and it subjects corporations to suits that might never have intended to do business over here.

I know the distinguished gentleman from Illinois [Mr. DURBIN] who just spoke is familiar with the Hague Convention on the taking of evidence abroad. He would not intentionally want to violate those rules of discovery of foreign corporations which already exist. The amendment is unnecessary. It casts too large a net. We are subject to retaliation. There is no definition of a foreign manufacturer.

There are just so many things wrong with this that I urge a ''no'' vote.

The CHAIRMAN. All time has expired on this amendment.

The question is on the amendment offered by the gentleman from Michigan [Mr. CONYERS].

The question was taken; and the Chairman announced that the ayes appeared to have it.

RECORDED VOTE

Mr. HYDE. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 258, noes 166, not voting 10, as follows:

[Roll No. 221]

AYES—258

Abercrombie	Bereuter	Brown (OH)
Ackerman	Berman	Brownback
Allard	Bevill	Bryant (TX)
Andrews	Bishop	Bunn
Bachus	Blute	Cardin
Baesler	Boehlert	Chambliss
Baldacci	Bonior	Chapman
Barcia	Borski	Chenoweth
Barrett (WI)	Boucher	Clay
Bateman	Brewster	Clayton
Becerra	Browder	Clement
Beilenson	Brown (CA)	Clinger
Bentsen	Brown (FL)	Clyburn

Coleman	Jackson-Lee	Pomeroy
Collins (IL)	Jacobs	Poshard
Collins (MI)	Jefferson	Pryce
Condit	Johnson (SD)	Rahall
Conyers	Johnson, E. B.	Ramstad
Cooley	Johnston	Reed
Costello	Jones	Regula
Coyne	Kanjorski	Reynolds
Cramer	Kaptur	Richardson
Crapo	Kennedy (MA)	Riggs
Danner	Kennedy (RI)	Rivers
de la Garza	Kildee	Roberts
Deal	Kleczka	Roemer
DeFazio	Klink	Rohrabacher
Dellums	LaFalce	Rose
Deutsch	Lantos	Roth
Diaz-Balart	Laughlin	Roukema
Dicks	Levin	Roybal-Allard
Dingell	Lewis (GA)	Royce
Dixon	Lincoln	Rush
Doggett	Lipinski	Sabo
Dooley	Lofgren	Sanders
Doolittle	Longley	Sawyer
Doyle	Lowey	Scarborough
Duncan	Luther	Schiff
Durbin	Maloney	Schroeder
Edwards	Manton	Schumer
Emerson	Markey	Scott
Engel	Martinez	Serrano
Ensign	Mascara	Shuster
Eshoo	Matsui	Sisisky
Evans	McCarthy	Skaggs
Farr	McDade	Skelton
Fattah	McDermott	Slaughter
Fazio	McHale	Smith (MI)
Fields (LA)	McInnis	Spratt
Filner	McIntosh	Stark
Foglietta	McKinney	Stearns
Forbes	McNulty	Stenholm
Ford	Meehan	Stokes
Fowler	Meek	Studds
Fox	Menendez	Stupak
Frank (MA)	Metcalf	Tanner
Frost	Meyers	Tate
Furse	Mfume	Tauzin
Gallegly	Miller (CA)	Taylor (MS)
Gejdenson	Mineta	Tejeda
Gephardt	Minge	Thompson
Geren	Mink	Thornton
Gibbons	Moakley	Thurman
Gillmor	Mollohan	Torres
Gilman	Montgomery	Torricelli
Gonzalez	Murtha	Traficant
Gordon	Nadler	Tucker
Graham	Neal	Velazquez
Green	Ney	Vento
Gunderson	Oberstar	Visclosky
Gutierrez	Obey	Volkmer
Hall (OH)	Olver	Walsh
Hamilton	Ortiz	Wamp
Harman	Orton	Ward
Hastings (FL)	Owens	Waters
Hayes	Pallone	Watt (NC)
Hayworth	Parker	Waxman
Hefley	Pastor	Weldon (PA)
Hefner	Payne (NJ)	Williams
Hinchey	Payne (VA)	Wilson
Hobson	Pelosi	Wise
Holden	Peterson (FL)	Wolf
Horn	Peterson (MN)	Woolsey
Hostettler	Petri	Wyden
Hoyer	Pickett	Wynn
Hunter	Pombo	Yates

NOES—166

Archer	Chabot	Flanagan
Armey	Christensen	Foley
Baker (CA)	Chrysler	Franks (CT)
Ballenger	Coble	Franks (NJ)
Barr	Coburn	Frelinghuysen
Barrett (NE)	Collins (GA)	Frisa
Bartlett	Combest	Funderburk
Barton	Cox	Ganske
Bass	Crane	Gekas
Bilbray	Cremeans	Gilchrest
Bilirakis	Cubin	Goodlatte
Bliley	Cunningham	Goodling
Boehner	Davis	Goss
Bonilla	DeLay	Greenwood
Bono	Dickey	Gutknecht
Bryant (TN)	Dornan	Hall (TX)
Bunning	Dreier	Hancock
Burr	Dunn	Hansen
Burton	Ehlers	Hastert
Buyer	Ehrlich	Hastings (WA)
Callahan	English	Heineman
Calvert	Everett	Herger
Camp	Ewing	Hilleary
Canady	Fawell	Hoekstra
Castle	Fields (TX)	Hoke
Hutchinson	McKeon	Skeen
Hyde	Mica	Smith (NJ)
Inglis	Miller (FL)	Smith (TX)
Istook	Molinari	Smith (WA)
Johnson (CT)	Moorhead	Solomon
Johnson, Sam	Morella	Souder
Kasich	Myers	Spence
Kelly	Myrick	Stockman
Kim	Nethercutt	Stump
King	Neumann	Talent
Kingston	Norwood	Taylor (NC)
Klug	Nussle	Thomas
Knollenberg	Oxley	Thornberry
Kolbe	Packard	Tiahrt
LaHood	Paxon	Torkildsen
Largent	Porter	Upton
Latham	Portman	Vucanovich
LaTourette	Quillen	Waldholtz
Lazio	Quinn	Walker
Leach	Radanovich	Watts (OK)
Lewis (CA)	Rogers	Weldon (FL)
Lewis (KY)	Ros-Lehtinen	Weller
Lightfoot	Salmon	White
Linder	Sanford	Whitfield
Livingston	Saxton	Wicker
Lucas	Schaefer	Young (AK)
Manzullo	Seastrand	Young (FL)
Martini	Sensenbrenner	Zeliff
McCollum	Shadegg	Zimmer
McCrery	Shaw	
McHugh	Shays	

NOT VOTING—10

Baker (LA)	Houghton	Rangel
DeLauro	Kennelly	Towns
Flake	LoBiondo	
Hilliard	Moran	

□ 1504

Messrs. PAXON, COBLE, and CHRYSLER changed their vote from ''aye'' to ''no.''

Messrs. BLUTE, WAMP, JONES of North Carolina, CHAMBLISS, POMBO, GALLEGLY, ROTH, PETRI, HORN, HAYWORTH, RAMSTAD, RIGGS, ROHRABACHER, HOBSON, MCINTOSH, ROYCE, BEREUTER, CRAPO, CLINGER, and BACHUS, Ms. PRYCE, Mrs. CHENOWETH, and Mrs. FOWLER changed their vote from ''no'' to ''aye.''

So the amendment was agreed to.

The result of the vote was announced as above recorded.

PERSONAL EXPLANATION

Mr. MORAN. Mr. Chairman, during rollcall vote No. 221 on H.R. 956 I was unavoidably detained. Had I been present I would have voted ''aye.''

The CHAIRMAN. It is now in order under the rule to consider amendment No. 6 printed in House Report 104–72.

AMENDMENT OFFERED BY MR. WATT OF NORTH CAROLINA

Mr. WATT of North Carolina. Mr. Chairman, I offer an amendment made in order under the rule.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. WATT of North Carolina: Page 17, lines 16–17, strike ''by clear and convincing evidence''.

Page 20, lines 4–11, strike the section in its entirety and renumber the subsequent sections accordingly.

The CHAIRMAN. Pursuant to the rule, the gentleman from North Carolina [Mr. WATT] will be recognized for 10 minutes, and a Member opposed will be recognized for 10 minutes.

The Chair recognizes the gentleman from North Carolina [Mr. WATT].

Mr. WATT of North Carolina. Mr. Chairman, I yield myself 4 minutes.

Mr. Chairman, let me put this in perspective for my colleagues, because this started out to be a part of a three-amendment package. Unfortunately, two of the three amendments the Committee on Rules did not see fit to make in order. So I want to talk a minute about the other two amendments and put this in context.

No. 1, this bill clearly preempts State law insofar as substantive law is concerned on products liability and in the area of punitive damages. But the bill actually goes beyond that to preempt State law, procedural law, by not only telling the States what standard of proof will be required, but also what the burden of proof will be in their courts.

The bill then, after it has preempted both procedural and substantive State law, says you cannot have access to the Federal courts under any circumstances to do any of this, so in effect it mandates the State courts not only the substance of what they shall apply as law, but the procedure by which they must apply the substantive law.

In North Carolina, in punitive damages cases, the burden of proof is beyond a preponderance of the evidence. That is the standard you must meet to win a case in North Carolina and in most State courts. This bill takes the standard and raises it to a standard of clear and convincing evidence, and by doing so not only preempts the substantive law of the State, but also preempts the procedural law of the State.

For my colleagues who have any respect for States' rights, it is one thing to say we will tell you what law to apply. It is an entirely different thing to say to the States we will tell you how to apply that law and how much of the evidence will be required to win a case and how you should try the case.

My colleagues, what I am trying to do by striking this clear and convincing evidence standard which is in this bill is to protect the integrity of our law in North Carolina insofar as we can do so to make sure that we at least begin to maintain the integrity of our procedural laws in North Carolina, even if my colleagues will not respect the substantive law in North Carolina.

Mr. Chairman, I reserve the balance of my time.

Mr. HYDE. Mr. Chairman, I rise in opposition to the amendment.

The CHAIRMAN. The gentleman is recognized for 10 minutes.

Mr. HYDE. Mr. Chairman, I thank the chairman for yielding me this time.

The amendment offered by the gentleman from North Carolina would strike section 201 of the bill, the clear and convincing evidence standard in punitive damages cases. This is an intermediate burden of proof that is higher than preponderance of the evidence, the general rule in civil cases, and a lower standard than proof beyond

a reasonable doubt, which is the burden in criminal cases. Because punitive damages are not designed to compensate injured parties, but rather to punish or to deter egregious conduct, a higher threshold than that required for establishing a right to compensation seems entirely appropriate. It is inconsistent with our concept of fairness to impose punishment in the form of punitive damages merely on the basis of showing a probability, perhaps a 51-percent likelihood.

The discussion of this subject in the American Law Institute Reporters' Study on Enterprise Responsibility for Personal Injury in 1991 has this to say:

In the case of punitive damages, the immediate victim's interests are not as important as society's need for optimal care, which includes avoiding overdeterrence and undue risk aversion by defendants to the detriment of people who need their goods and services. While the full-blown retributive rationale for punitive damages might suggest imposition of the criminal law standard of proof ''beyond a reasonable doubt,'' what is at issue here is a civil monetary penalty against an organization, not the criminal condemnation and deprivation of liberty (or even life) of an individual. Consequently, we endorse the emerging consensus among legal scholars, practitioners, and state legislators in favor of an intermediate ''clear and convincing evidence'' burden of proof.

That is exactly what we have in this bill.

The report of the Special Committee on Punitive Damages of the American Bar Association, its section on litigation, reached the same result. What they said in their report:

Because one of the purposes of punitive damages is punishment, the committee feels that it is important that persons who are not guilty of conduct warranting an award of punitive damages should not be punished. The value in ensuring that innocent defendants are not held liable for punitive damages overrides the effects of a small number of instances where guilty defendants might not be held liable. The committee concludes, therefore, that the ''clear and convincing'' burden of proof is appropriate for an award of punitive damages.

That is what we have in this legislation. If we allow punitive damage awards based on too loose an evidentiary standard, we risk punishing defendants unfairly, and exacerbate pressures to offer settlements in cases of tenuous liability. Consumers of goods and services often end up paying the cost of inappropriate awards of punitive damages. For these reasons, I believe the standard of clear and convincing evidence is fair and reasonable. It is not a mere preponderance; it is not beyond a reasonable doubt; it is right in the middle, clear, and convincing evidence. The American Bar Association, recommends it; the American Law Institute recommends it; and I recommend it.

Mr. Chairman, the amendment offered by the gentleman from North Carolina would strike from section 201 of the bill the ''clear and convincing evidence'' standard in punitive damages cases. This is an intermediate burden of proof that is a higher standard than ''preponderance of the evidence,'' the general rule in civil cases, and a lower standard than ''proof beyond a reasonable doubt,'' the burden in criminal cases.

Because punitive damages are not designed to compensate injured parties but rather punish or deter egregious conduct, a higher threshold than that required for establishing a right to compensation seems entirely appropriate. It is inconsistent with our concept of fairness to impose punishment, in the form punitive damages, merely on the basis of showing a probability—perhaps a 51-percent likelihood.

The discussion of this subject in the American Law Institute Reporters' Study on Enterprise Responsibility for Personal Injury [1991] is particularly pertinent:

[I]n the case of punitive damages, the immediate victim's interests are not as important as society's need for optimal care, which includes avoiding overdeterrence and undue risk aversion by defendants to the detriment of people who need their goods and services. While the full-blown retributive rationale for punitive damages might suggest imposition of the criminal law standard of proof ''beyond a reasonable doubt,'' what is at issue here is a civil monetary penalty against an organization, not the criminal condemnation and deprivation of liberty (or even life) of an individual. Consequently, we endorse the emerging consensus among legal scholars, practitioners, and state legislators in favor of an intermediate ''clear and convincing evidence'' burden of proof.

The Report of the Special Committee on Punitive Damages of the American Bar Association Section of Litigation [1986] reached the same result. That report concludes:

Because one of the purposes of punitive damages in punishment, the committee feels that it is important that persons who are not guilty of conduct warranting an award of punitive damages should not be punished. The value in insuring that innocent defendants are not held liable for punitive damages overrides the effects of a small number of instances where guilty defendants might not be held liable. The committee concludes, therefore, that the ''clear and convincing'' burden of proof is appropriate for an award of punitive damages.

If we allow punitive damages awards based on too loose an evidentiary standard, we not only risk punishing defendants unfairly but also exacerbate pressures to offer settlements in cases of tenuous liability. Consumers of goods and services often end up paying the costs of inappropriate awards of punitive damages.

For all these reasons, I believe the standard of ''clear and convincing evidence'' is fair and reasonable. I urge the defeat of the pending amendment.

□ 1515

Mr. BERMAN. Mr. Chairman, will the gentleman yield?

Mr. HYDE. I yield to the gentleman from California.

Mr. BERMAN. The gentleman makes a very good, well-documented case for the appropriateness of the clear and convincing standard.

Mr. HYDE. I thank the gentleman.

Mr. BERMAN. But what he has not said one word about is why we should be pushing our judgment onto a State in an area of which there is no Federal interest in deciding whether it wants a higher standard or a lower standard.

Mr. HYDE. Reclaiming my time, Mr. Chairman, there is a great interest in standardizing the elements of proof. We are trying to have a products liability and litigation standard that transcends the 50 boundaries, so as to not have 50 separate standards. It seems to me, when you get to the subject of punitive damages, which can affect the entire stream of commerce, it is beneficial to have a standard level of proof.

Mr. Chairman, I reserve the balance of my time.

Mr. WATT of North Carolina. Mr. Chairman, I yield 2 minutes to the gentleman from Virginia [Mr. SCOTT].

Mr. SCOTT. Mr. Chairman, I think we need to put this amendment and others into context, because this is not the only bill that we have passed regarding this subject. We have the loser pays bill that is designed to get rid of frivolous lawsuits, but it also has an impact on lawsuits like this.

If you had a case, for example, that you could win under the present law and this change comes about, you had a case that was previously a winner, now is a loser on the punitive damages. And if you failed to settle the case for what was offered and because of this higher standard, you come in a little bit under what was offered, you now have a frivolous lawsuit, in which case you have to pay both sides attorney's fees.

Mr. Chairman, there is a case in 1984 where a plaintiff presented evidence in a case involving bandages that had been contaminated and they had bought the bandages, the warehouse, they had already been notified about the contamination. The quality control advisor had told them that the bandages were contaminated. And they were used, sold anyway, and a person was injured. Damages totaled, medical damages of only $4,200. But if that case had not been settled, and they received punitive damages under the present law, if this amendment is not adopted and they lost the case because of the higher standard, that would now be a frivolous case and they could be in a situation where they are paying not only their attorney's fees but the other attorney's fees.

Mr. Chairman, I would hope that we would leave it up to the States, not change the standard and not turn the clock back on consumer protection, because the fact that these cases can be brought means that other consumers can have bandages that are not contaminated, because the companies have not had to pay the punitive damages.

Mr. Chairman, this is a very valuable amendment. I hope we leave it up to the States to decide what the standard ought to be.

Mr. HYDE. Mr. Chairman, would the Chair advise how much time I have left?

The CHAIRMAN. The gentleman from Illinois [Mr. HYDE] has 5 minutes remaining, and the gentleman from North Carolina [Mr. WATT] has 4 minutes remaining.

Mr. HYDE. Mr. Chairman, I yield myself 1 minute.

I just wish to say, we are talking about punitive damages, which can have a serious impact on the economy, on jobs. They can extend, and do extend, well beyond the borders of a State. The purpose of this legislation is to standardize, as much as possible, in a fair way, the elements of proof that impact on our economy. If we want to have 50 patchwork sets of laws to deal with the economy and deal with products liability, why, I suppose we can. But the purpose of this legislation is to assist manufacturers, to give some certitude, some predictability, to do away with lawsuit abuse, forum shopping. Therefore, I must resist the gentleman's amendment.

Mr. WATT of North Carolina. Mr. Chairman, I yield 1½ minutes to the gentlewoman from North Carolina [Mrs. CLAYTON].

Mrs. CLAYTON. Mr. Chairman, I rise in support of the Watt amendment. The bill before us would take certain legal standards in a direction that is inconsistent with our system of justice. First, under the bill, the burden of proof in awarding punitive damages would be imposed by the Federal Government, thereby preempting the States from regulating this area. And, second, the bill imposes an awkward standard of proof in civil litigation that would make it unusually and unfairly difficult for victims to recover.

The Watt amendment corrects these imperfections.

The bill establishes a standard of ''clear and convincing'' evidence as the burden of proof for the award of punitive damages. A victim would have to show that the defendant, first, specifically intended to cause harm and, second, manifested a conscious, flagrant indifference to the safety of others.

These new requirements would totally change the punitive damages burden of proof in each of the 50 States. It has been my understanding, Mr. Chairman, that the majority has been pressing to return power to the States, not to take it away. The bill language takes power from the States and imposes a federally created standard.

More importantly, however, the bill creates a new standard in civil litigation. Currently, the standard is ''preponderance of the evidence.'' Apparently, under the bill, the preponderance standard would apply in the case in the main, but the ''clear and convincing'' standard would apply in assessing punitive damages. That is an awkward way to proceed and, in my view an unfair and unequitable way to proceed.

If you support the rights of States, and if you support a level playing field among litigants, support the Watt amendment.

Mr. HYDE. Mr. Chairman, I yield 2 minutes to the distinguished gentleman from Ohio [Mr. HOKE], a member of the committee.

Mr. HOKE. Mr. Chairman, I think we have forgotten again what the basis is of punitive damages. Punitive damages comes from the doctrine of punishment which is really a quasi-criminal remedy. It is not strictly a civil remedy. That is the whole purpose of raising the standard of proof.

As we all know, lawyers on this committee know that the standard of proof, when it comes to proving a crime, is one of ''beyond a reasonable doubt.'' And when you are merely proving a civil case, it is the ''preponderance of the evidence.'' Well, ''clear and convincing'' is in between.

We are not talking about compensation here. We are talking about punishment. If we are going to go to a standard of proof that is going to mete out punishment, then we should require that that standard of proof be higher than the normal standard of proof that you find in a civil case.

While you can talk about States' rights or you can make other arguments until your heart is content, the fact is that what is really going on here is the need to have a standard of proof which meets the remedy. And the remedy is punitive, punishing—punishing the wrongdoer—if we are going to go to that point, after having compensated the victim for either his or her personal injuries or for property damages, to have a higher standard of proof. Otherwise, it is simply not fair and it is a way of using the civil justice system as a substitute for the criminal justice system in a way that is completely unintended, never was intended by our justice system and simply will not work.

Finally, it will undermine the confidence of the public in a system when they cannot predict what the outcomes are going to be, when they do not know what is going to happen and when they know that it is easier to get a punitive damage award for punishment at the civil bar than it is to actually convict someone of a crime at the criminal bar.

For all those reasons, I very strongly urge that we defeat this amendment.

Mr. WATT of North Carolina. Mr. Chairman, I yield 1 minute to the gentleman from California [Mr. BERMAN].

Mr. BERMAN. Mr. Chairman, I listened to the gentleman from Ohio and I finally got it. New Jersey has a law that provides punitive damages uncapped for suits against sexual predators. They have a standard of ''preponderance of the evidence.''

How can we allow 50 different States to have 50 different standards against sexual predators? Sexual predators should know what the uniform, nationwide, 50-State standard is for punitive damages. This is a punitive kind of a thing. We have to protect these people against actions against them. Stream of commerce? Come on. Give me a break.

Mr. WATT of North Carolina. Mr. Chairman, I yield 1 minute to the gentleman from Texas [Mr. DOGGETT] .

Mr. DOGGETT. Mr. Chairman, at the same time last year I sat on the highest State court in the State of Texas, struggling with this very issue. Our court looked at what the standard should be on the question of punitive damages. It looked at ''clear and convincing evidence.'' It looked at burden by ''a preponderance.'' It looked beyond ''a reasonable doubt,'' and it chose not to pursue this standard.

Other States have chosen to pursue the ''clear and convincing'' standard. There are some good arguments for it. But the one thing that is clear and very convincing about this debate is that our States are being denied that right and that people that come here praising the 10th amendment are shredding it in the course of this debate and are saying that State jurists and legal scholars and State legislators around this country shall not have the right to set the standard that will apply to their citizens.

So much of this debate is build on the theory that we not only need trickle-down economics, that what we need is trickle-down government and that it ought to trickle down from Washington instead of gushing up from the people and their State and local leaders.

I reject that, as this amendment does.

Mr. WATT of North Carolina. Mr. Chairman, I yield myself the balance of my time.

The CHAIRMAN. The gentleman from North Carolina [Mr. WATT] is recognized for 1 minute.

Mr. WATT of North Carolina. Mr. Chairman, it is clear that this is not about what the appropriate standard should be for burden of proof for punitive damages. The issue is not what that appropriate standard should be. The issue is, who ought to be setting that standard? If Members believe that the States have a place in our federation, which is what I have heard over and over and over again, I submit to my colleagues that the States ought to be determining for themselves what their own burdens of proof are and that we ought not at this level, at the Federal level, to be telling them that.

Regardless of whether we think it ought to be one thing or the other, higher or lower, the States have the right to make this decision, not my colleagues here in this body.

Mr. HYDE. Mr. Chairman, I yield the balance of my time to the distinguished gentleman from Wisconsin [Mr. SENSENBRENNER].

The CHAIRMAN. The gentleman from Wisconsin [Mr. SENSENBRENNER] is recognized for 2 minutes.

Mr. SENSENBRENNER. Mr. Chairman, I am shocked at listening to the argument from the gentleman from North Carolina [Mr. WATT] and the gentleman from Texas [Mr. DOGGETT]. That was the same argument that was used 30 years ago in this Chamber by those who were opposed to the civil rights legislation that revolutionized our society.

This Congress, 30 years ago used the commerce clause for passing the Civil Rights Act of 1964, one which opened up public accommodations, lunch counters, mom and pop cafes, local city buses to people of all races without discrimination. And that is one of the things that this Congress can take pride in doing.

What we are proposing to do here is to use the commerce clause for something that is just as much interstate commerce as the civil rights legislation. And that is to try to have a uniform standard throughout the country on punitive damages so that there will not be forum shopping in a State that has a lower standard on what has to be proven in order to get punitive damages.

There are a number of States that have adopted the clear and convincing standard, including California, and Colorado has adopted the beyond a reasonable doubt standard for punitive damages.

What will happen in the States that have adopted a higher standard than preponderance of the evidence is that those manufacturers will end up paying much higher product liability insurance premiums even though the people in that State will not be able to enjoy what they are paying for.

☐ 1530

Consequently, you are going to be seeing people in California, which has passed a clear and convincing evidence standard, through their higher consumer prices, benefiting the people in the other States that have not. This issue should be federalized, and the amendment should be defeated.

The CHAIRMAN. All time has expired.

The question is on the amendment offered by the gentleman from North Carolina [Mr. WATT].

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Mr. WATT of North Carolina. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The CHAIRMAN. This is a 17-minute vote.

The vote was taken by electronic device, and there were—ayes 150, noes 278, not voting 6, as follows:

[Roll No. 222]

AYES—150

Abercrombie	Clay	Dixon
Ackerman	Clayton	Doggett
Andrews	Clyburn	Doyle
Baldacci	Coleman	Engel
Becerra	Collins (IL)	Eshoo
Beilenson	Collins (MI)	Evans
Bentsen	Conyers	Farr
Berman	Costello	Fattah
Bevill	Coyne	Fields (LA)
Bishop	de la Garza	Filner
Bonior	Deal	Flake
Brown (CA)	DeFazio	Foglietta
Brown (FL)	DeLauro	Ford
Brown (OH)	Dellums	Frost
Bryant (TX)	Deutsch	Furse
Cardin	Dicks	Gejdenson
Chapman	Dingell	Gephardt
Gibbons	Mascara	Sawyer
Green	Matsui	Schroeder
Gutierrez	McCarthy	Schumer
Harman	McDermott	Scott
Hastings (FL)	McKinney	Serrano
Hayes	Meehan	Slaughter
Hefner	Meek	Spratt
Hilliard	Menendez	Stark
Hinchey	Mfume	Stokes
Holden	Miller (CA)	Studds
Hoyer	Mineta	Stupak
Jackson-Lee	Minge	Tejeda
Jefferson	Mink	Thompson
Johnson (SD)	Moran	Thornton
Johnson, E.B.	Nadler	Thurman
Johnston	Oberstar	Torres
Kanjorski	Olver	Towns
Kennedy (MA)	Ortiz	Traficant
Kennedy (RI)	Orton	Tucker
Kennelly	Owens	Velazquez
Kildee	Pallone	Vento
Kleczka	Pastor	Visclosky
Klink	Payne (NJ)	Volkmer
LaFalce	Payne (VA)	Ward
Lantos	Pelosi	Waters
Levin	Reed	Watt (NC)
Lewis (GA)	Reynolds	Waxman
Lipinski	Rivers	Williams
Lofgren	Rose	Wise
Lowey	Roybal-Allard	Woolsey
Maloney	Rush	Wyden
Manton	Sabo	Wynn
Markey	Sanders	Yates

NOES—278

Allard	Dickey	Inglis
Archer	Dooley	Istook
Armey	Doolittle	Jacobs
Bachus	Dornan	Johnson (CT)
Baesler	Dreier	Johnson, Sam
Baker (CA)	Duncan	Jones
Baker (LA)	Dunn	Kaptur
Ballenger	Durbin	Kasich
Barcia	Edwards	Kelly
Barr	Ehlers	Kim
Barrett (NE)	Ehrlich	King
Barrett (WI)	Emerson	Kingston
Bartlett	English	Klug
Barton	Ensign	Knollenberg
Bass	Everett	Kolbe
Bateman	Ewing	LaHood
Bereuter	Fawell	Largent
Bilbray	Fazio	Latham
Bilirakis	Fields (TX)	LaTourette
Bliley	Flanagan	Laughlin
Blute	Foley	Lazio
Boehlert	Forbes	Leach
Boehner	Fowler	Lewis (CA)
Bonilla	Fox	Lewis (KY)
Bono	Frank (MA)	Lightfoot
Borski	Franks (CT)	Lincoln
Boucher	Franks (NJ)	Linder
Brewster	Frelinghuysen	Livingston
Browder	Frisa	Longley
Brownback	Funderburk	Lucas
Bryant (TN)	Gallegly	Luther
Bunn	Ganske	Manzullo
Bunning	Gekas	Martinez
Burr	Geren	Martini
Burton	Gilchrest	McCollum
Buyer	Gillmor	McCrery
Callahan	Gilman	McDade
Calvert	Gonzalez	McHale
Camp	Goodlatte	McHugh
Canady	Goodling	McInnis
Castle	Gordon	McIntosh
Chabot	Goss	McKeon
Chambliss	Greenwood	McNulty
Chenoweth	Gunderson	Metcalf
Christensen	Gutknecht	Meyers
Chrysler	Hall (TX)	Mica
Clement	Hamilton	Miller (FL)
Clinger	Hancock	Moakley
Coble	Hansen	Molinari
Coburn	Hastert	Mollohan
Collins (GA)	Hastings (WA)	Montgomery
Combest	Hayworth	Moorhead
Condit	Hefley	Morella
Cooley	Heineman	Murtha
Cox	Herger	Myers
Cramer	Hilleary	Myrick
Crane	Hobson	Neal
Crapo	Hoekstra	Nethercutt
Cremeans	Hoke	Neumann
Cunningham	Horn	Ney
Danner	Hostettler	Norwood
Davis	Hunter	Nussle
DeLay	Hutchinson	Obey
Diaz-Balart	Hyde	Oxley
Packard	Salmon	Tate
Parker	Sanford	Tauzin
Paxon	Saxton	Taylor (MS)
Peterson (FL)	Scarborough	Taylor (NC)
Peterson (MN)	Schaefer	Thomas
Petri	Schiff	Thornberry
Pickett	Seastrand	Tiahrt
Pombo	Sensenbrenner	Torkildsen
Pomeroy	Shadegg	Torricelli
Porter	Shaw	Upton
Portman	Shays	Vucanovich
Poshard	Shuster	Waldholtz
Pryce	Sisisky	Walker
Quillen	Skaggs	Walsh
Quinn	Skeen	Wamp
Radanovich	Skelton	Watts (OK)
Rahall	Smith (MI)	Weldon (FL)
Ramstad	Smith (NJ)	Weldon (PA)
Regula	Smith (TX)	Weller
Richardson	Smith (WA)	White
Riggs	Solomon	Whitfield
Roberts	Souder	Wicker
Roemer	Spence	Wilson
Rogers	Stearns	Wolf
Rohrabacher	Stenholm	Young (AK)
Ros-Lehtinen	Stockman	Young (FL)
Roth	Stump	Zeliff
Roukema	Talent	Zimmer
Royce	Tanner	

NOT VOTING—6

Cubin	Hall (OH)	LoBiondo
Graham	Houghton	Rangel

☐ 1548

The clerk announced the following pairs:

On this vote:

Mr. Rangel for, with Mrs. Cubin against.

Mr. POMEROY changed his vote from ''aye'' to ''no.''

Mr. FOGLIETTA changed his vote from ''no'' to ''aye.''

So the amendment was rejected.

The result of the vote was announced as above recorded.

PERSONAL EXPLANATION

Mr. LOBIONDO. Mr. Chairman, I was granted a leave of absence through 4 o'clock this afternoon. I would like the RECORD to reflect that had I been present I would have voted ''Yes'' on rollcall No. 217, ''Yes'' on rollcall No. 218, ''No'' on rollcall No. 219, ''No'' on rollcall No. 220, ''Yes'' on rollcall No. 221, and ''No'' on rollcall No. 222.

The CHAIRMAN. It is now in order under the rule to consider amendment No. 7 printed in House Report 104–72.

AMENDMENT OFFERED BY MS. FURSE

Ms. FURSE. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Ms. FURSE: Page 17, strike line 22 and all that follows through line 2 on page 18 and redesigate the succeeding subsections accordingly.

The CHAIRMAN. Pursuant to the rule, the gentlewoman from Oregon [Ms. FURSE] and a Member opposed will each be recognized for 15 minutes.

The Chair recognizes the gentlewoman from Oregon [Ms. FURSE].

Ms. FURSE. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, my amendment lifts this bill's caps on punitive damages because the cap in this bill discriminates against women, children, retirees, and low-wage workers. My amendment does not change the high standards of proof needed to get punitive damages.

What are punitive damages? They are damages the court sets as a punishment for conscious, flagrant indifference to the safety of others. In the few cases where they have been awarded, just 15 nationwide in 1994, they have proved to be effective. They have caused important changes in articles that people use or come in contact with, and these changes have saved lives.

This Republican bill for the very first time ties punitive damages to economic damages in such a way that it discriminates because it sets these punitive damages in such a way that injuring a rich person is punished more heavily than injuring a poor person. I ask Members, is that fair? Is that the American way of justice?

Under the Republican bill, the punishment of a conscious indifference to the safety of a person whose economic damages were $1 million could be capped at $3 million. Yet the punishment for the same conscious, flagrant indifference to the safety of a person whose economic damages were only $10,000 would be capped at $250,000.

Why? Why would we do that? I want to remind my colleagues that women, children, retired persons, people who earn less money than others would all have far smaller economic damages than a person who makes a great deal of money, $1 million a year, say.

I am in favor of some cap on punitive damages, but not a cap that discriminates against women and children and low-wage workers.

My amendment is simply a fair amendment. It believes that when we punish people for their flagrant disregard for the safety of the people who use a product that they will be punished fairly. I ask a ''yes'' vote on the Furse-Mink amendment.

Mr. Chairman, I reserve the balance of my time.

Mr. HYDE. Mr. Chairman, I rise in opposition to the Furse amendment.

The CHAIRMAN. The gentleman from Illinois [Mr. HYDE] will be recognized for 15 minutes to manage the opposition to the Furse amendment.

(Mr. HYDE asked and was given permission to revise and extend his remarks.)

Mr. HYDE. Mr. Chairman, this amendment eliminates one of the most important features of this bill: the cap on punitive damages. Under section 201(b), a punitive damages award cannot exceed three times the award for economic loss, or $250,000, whichever is greater. Without a cap on punitive damages, our ability to compete in international markets is compromised, the settlement value of cases is inflated, consumers pay higher prices, and defendants face risks out of proportion to injuries sustained.

U.S. competitiveness is compromised because many countries of the world do not recognize the concept of punitive damages at all. We, in the United States, allow virtually unlimited punitive damages. The settlement value of cases is greatly inflated because defendants feel pressure to settle cases with very tenuous liability rather than face the possibility of high punitive damages awards. American consumers pay higher prices because American businesses, from manufacturers to service providers, factor their punitive damages exposure into their costs.

Punitive damages are not designed to compensate for losses. They are designed to punish wrongdoers, not compensate victims. The provisions in H.R. 956 do not affect, in any way, a victim's full recovery of complete economic damages, such as medical costs and lost wages, or noneconomic damages, such as for pain and suffering and emotional distress.

Even, would you believe, the Washington Post editorial staff supports punitive damages reform. Just last Wednesday they wrote that punitive damages reform is ''long overdue, guidelines and limits must be set.''

Due process must limit States' authority to impose punitive damages. In a recent case, Pacific Mutual Life Insurance versus Haslip, the U.S. Supreme Court held that the due process clause limits the ability of States to impose punitive damages. The Court expressed concern about punitive damages, which have run wild, and made it clear that this was an area calling for reasonable and rational reform.

Punitive damages impede quick settlements. Under today's system, punitive damages vary so greatly and are so uncertain they get in the way of quick settlements.

These damages are a total wild card in today's lawsuits. Because under the current system, no one has any idea of what a final punitive damage verdict might be, both sides find it difficult to reach the agreement necessary for speedy resolution.

I urge a ''no'' vote on the Furse amendment which removes from the bill the reasonable limits on punitive damage awards.

Mr. Chairman, I reserve the balance of my time.

Ms. FURSE. Mr. Chairman, I yield 5½ minutes to the gentlewoman from Hawaii [Mrs. MINK].

(Mrs. MINK of Hawaii asked and was given permission to revise and extend her remarks.)

Mrs. MINK of Hawaii. Mr. Chairman, I thank the gentlewoman for yielding me time.

I am very proud to rise in support of the Furst amendment which I also submitted to the Committee on Rules for consideration. Under our system of justice, individuals who are injured have the absolute right to go to court to seek compensation for damages that they have suffered. This is a basic right under our American system of law and it is a right that has to be defended, and that is why the gentlewoman from Oregon [Ms. FURSE] and I are here today, defending the basic fundamental right of all Americans to have the same equal provisions of justice applied to all of us irrespective of whether we work or do not work, whether we are men or women, poor or rich, young or old. The system of justice has to be equal. This section that we are seeking to strike from the bill is an absolute discriminatory provision which goes against women who are homemakers or women who are low-wage earners, children, elderly, and the poor in our society.

I find it very difficult to understand why this provision was added to the bill except perhaps it helps insurance companies. Because as I understand the majority party and those that I have worked with over the years, they are champions, absolute champions of individual rights. Besides that, they belabor the point that they do not want interference from the Federal Government of the rights and prerogatives of State governments. This is exactly what we are trying to strike out of the bill, an absolute invasion on the prerogatives of the State to decide how they want to apply this concept of punitive damages under State law.

I believe that punitive damages are appropriate and that the State statutes ought to govern how they are to be applied. States have enacted them. They have worked under punitive laws setting up standards and whatever. I do not understand where the justification is for now coming in and overturning all of these State statutes. In fact, when you look at the records of the number of punitive awards that have been made in the last 25 years, there have been only 355 such punitive damage awards. Half of them have been either reduced or overturned. So where is this overwhelming necessity to supplant the State laws with now the wisdom of the Congress of the United States? I submit that the case has not been made for such intervention.

□ 1600

The courts ought to be allowed to determine whether punitive damages ought to be leveled and what the damages should be dependent on the egregiousness of the injuries sustained by the victims. There should be no limits and if there has to be one, certainly it has to be nondiscriminatory.

Limits that are discriminatory should be banned under any concept of equal justice in America. Where people are allowed to receive more damages, punitive damages because of their economic status, because they are a CEO or they are a rich attorney, is simply not fair. The economic standing of the individual who has gone to court and supported the concept of punitive damages and won that concept by the court should not have those damages limited because they are poor, because they do not work, because they are children, because they are women or because they are retired. Unfortunately this bill sets a punitive damage cap which is unfair and only allows the rich to have the kind of award as indicated here in the chart.

Mr. DOGGETT. Mr. Chairman, will the gentlewoman yield?

Mrs. MINK of Hawaii. I yield to the gentleman from Texas.

Mr. DOGGETT. A couple of questions that the gentlewoman's comments have raised. The first one is I believe every Member has received today a package of old fashioned Girl Scout cookies. Does the gentlewoman have any understanding of why these special interests keep hiding behind the skirts of the Little League and outfits like the Girl Scouts instead of fighting their own battles?

Mrs. MINK of Hawaii. I think it is basically because they cannot stand up on their two feet and defend what they are doing to the women and children of this country, so they are using mischievous allegations that the Girl Scouts support this.

Mr. DOGGETT. Will the gentlewoman yield for another question?

Mrs. MINK of Hawaii. Yes, I yield to the gentleman from Texas.

Mr. DOGGETT. If the young women who are pictured on this box of Girl Scout cookies, if they get injured and they are scarred or maimed for life, will they get less unless the amendment is adopted than the corporate lobbyists who sent these boxes of cookies to every Member?

Mrs. MINK of Hawaii. Unless they can prove economic damages, which children cannot do, they will get nothing, no matter how egregious the injury and suffering of the children, and I urge this amendment be adopted.

Mr. HYDE. Mr. Chairman, I am pleased to yield 3 minutes to the distinguished gentleman from Ohio [Mr. HOKE], a member of the committee.

Mr. HOKE. Mr. Chairman, we have heard repeatedly over the past several days of debate that there have been only 350 cases in all of American history that have resulted in the assessment of punitive damages and we have just heard that in fact this movement to try to put some sort of cap on punitive damages is being brought by special interests. But what we are not hearing about from the other side is the biggest special interest of all in the U.S. Congress, and that is the special interest of the trial lawyers. Two million dollars was spent by the trial lawyers in the 1993–94 cycle supporting Democratic candidates.

Let us look at the truth about this outrageous claim there have only been 350 cases in all of American history resulting in the assessment of punitive damages. That is complete hogwash and they know it is hogwash. They know there is no central list of punitive damages nationwide and they can pay for studies that will say whatever the lawyers want to say.

The case the trial lawyers mentioned represents a fraction of the type of cases in which punitive damages have been recovered. In just the last 4 years in the State of California alone there have been 253 jury verdicts in punitive damages cases to the tune of $1.6 billion, and in the past 2 years in four other States there have been 158 punitive damages alone. That is all punitive damage awards in just five States since 1990.

In order to understand the rationale for capping punitive damages we have to first look at the doctrine that underlines punitive damages themselves. Punitive damages are meant to be punishment for wrongdoing, the civil analog to a criminal fine. As we all know they are in addition to compensatory damages, those are the damages that are meant to compensate the victim for personal injury or damage to property. Punitive damages are a civil remedy that in many ways take on the qualities of a criminal remedy, and it is where the civil and the criminal law intersect.

This is why there is a fundamental problem with not having some outer limit on what the jury can render as punitive damages.

In order for our system of justice to inspire confidence in the public, it has to be meted out in a dispassionate and evenhanded and fairminded way which is consistent with respect to all parties in all situations or at least as consistent as possible. But the development of the doctrine of punitive damages in the past several decades has actually moved us in the opposite direction and it has moved us in the direction of unpredictability, not evenhandedness and is very much subject to passions which can be aroused by vigorous and inflammatory representation and counsel. To ensure public confidence in our justice system justice cannot be subject to capricious and unpredictable results. This is why in criminal cases we have never given juries the unfettered ability to set maximum fines.

Ms. FURSE. Mr. Chairman, I yield 1½ minutes to the distinguished gentleman from Oregon [Mr. DEFAZIO].

Mr. DEFAZIO. Mr. Chairman, in case Members have not been following the debate closely, it has been a great break for Wall Street and the advice of the day is buy insurance company stocks because this legislation is a tremendous gift to the insurance companies. The gentleman who preceded me talked about generous contributions of the Democrats to the trial lawyers and consumers groups but what he forgot was that more than 12 times as much money flowed from insurance companies and other corporations to the Republican Party. And they are getting their payoff here today.

We are going to preempt the judgment of every jury in America on this floor today. The judgment of that side of the aisle is better than those 12 or 10 men and women who sit in judgment of their peers. We are throwing equal justice out the window. We are imposing caps, we are imposing discriminatory caps, caps that say, well, if you are a middle-income worker or you are a spouse or you are a child or a college student, you are worth a lot less in terms of punitive damages than a corporate executive.

That is what this amendment would overturn. Otherwise we will impose that discrimination, we will give that benefit to the better off, enshrine it in Federal law. We always knew the wealthy have done better in court. Now we are going to mandate that the wealthy do better in court.

What about the Ford Pinto? There has not been much discussion of that down here today. Do my colleagues not think there is a place for punitive damages when one of the largest corporations in the world willfully, it knows that its product is defective and it will cause death, and it willfully hides that.

Mr. HYDE. Mr. Chairman, I am pleased to yield 4 minutes to the gentleman from Virginia [Mr. GOODLATTE], and I would hope the gentleman could tell us some insurance companies that cover punitive damages. My understanding is they will cover negligence, but they do not cover punitive. But apparently they do; the gentleman from Oregon said so.

Mr. GOODLATTE. I thank the chairman for yielding me this time and I think he makes an excellent point.

This is a very important amendment to defeat, and the reason it is is that it is going to effectively limit our ability as a country to have a due process, a due course for setting public policy in this country. The problem we have is that only in recent decades has it become popular to offer up through juries multimillion dollar punitive damage awards that have the effect of going well beyond what juries were selected to do. And the jury system in this country is an excellent one. It works very well when it is working to resolve disputes between two or more people in court.

But when you arbitrarily have a system in this country where a jury in one community in the country can impose a multimillion dollar punitive damage award and have the effect of changing public policy in this country, sometimes good, sometimes not so good, as in the case of a Mercedes Benz scratch on a vehicle where a multimillion-dollar award is made.

And how about this case that Justice Lewis Powell wrote about involving an insurance company that appealed a jury's punitive damage award of $3.5 million on its alleged bad faith failure to pay $1,650.22 on a $3,000 insurance claim. Now where is the predictability and fairness of this to anybody doing business in this country, large business or small, to say that when you have a $3,000 insurance policy, and one of your many thousands of employees screws up and does not pay $1,650, that somebody should be liable for $3.5 million? What kind of windfall is that to the plaintiff in that case? It is absolutely inappropriate and it should not be allowed. That is why these caps are important.

The gentlewoman makes a point that there is discrimination in the way this

is imposed, because somebody who has larger economic damages will receive more than somebody who has smaller economic damages.

In point of fact it could be the reverse, though, because an executive could have very small economic damages and a janitor could have very high medical bills and lost income and so on if it goes for many years.

But notwithstanding that point, let me point out this: We can cure this problem by adopting the amendment that is coming up shortly. Why should the plaintiff receive punitive damages in the first place? The plaintiff is rewarded for economic damages. That is the lost income they have. That is the lost future income they have. That is the medical bills they have and other out-of-pocket expenses. In addition, though, they are entitled to noneconomic damages for pain and suffering.

This is something that is beyond what the plaintiff has lost, both in terms of their pain and in terms of their actual loss, and it ought to be going to a public good, if it is indeed intended to punish somebody.

We can solve this by adopting the Hoke amendment which gives the preponderance of punitive damage awards to the State, to the State Treasury for the general public good. That is what should be done with the punitive damage awards we allow underneath the caps and that will solve the problem of discrimination, because plaintiffs are given compensation based on economic damages and noneconomic damages and not based upon punitive damage awards.

That is what Justice Powell pointed out when he wrote that ''Alabama's system,'' that is where that award was made, ''like that employed by other States that permit punitive damages, invites punishment so arbitrary as to be virtually random: In each case, the amount of punitive damages is fixed independently, without reference to any statutory limit or the punishment applied in any other case.'' Jurors award punitive damages cases, they determine the dollar amount between zero and infinity. ''This grant of standardless discretion to punish has no parallel in our system of justice. In the Federal system and in most States criminal fines are imposed by judges,'' and I oppose the amendment.

Ms. FURSE. Mr. Chairman, I yield 1½ minutes to the gentleman from New York [Mr. HINCHEY].

Mr. HINCHEY. Mr. Chairman, there is no doubt that our legal system can and should be improved. But this measure like so much of the Contract With America, goes too far. It is extreme, it is radical and it is unfair. It would deny people their opportunity to go to court to get justice.

Let me tell you a story of a person who lives near my district. Alice Hayes, 57 years old, worked on an assembly line all her life, went to work one day in the plastics molding factory, stuck her hands in the machine to remove the plastic mold, and the machine came down on those hands and severed them and her forearms as well. Alice Hayes no longer has her hands and no longer has her forearms; she will never get those hands back. But under the present law in New York, she at least has the opportunity to get justice. Under this bill she will lose both, her hands and the opportunity for justice.

This amendment at least provides some opportunity for punitive damages, so that she could be somewhat compensated for the loss that she has sustained. This bill will deny that opportunity.

This amendment should be passed.

Furthermore, this bill ought to be defeated.

There was another instance, an elementary school in Coldenham in which one day the cafeteria wall collapsed and the roof came crashing down on the children in that school. A number of them lost their lives, others were injured.

This bill will prevent them from getting the opportunity for justice.

The amendment should be passed.

The bill should be defeated.

Ms. FURSE. Mr. Chairman, I yield 1 minute to the gentlewoman from New York [Ms. VELÁZQUEZ].

Ms. VELÁZQUEZ. Mr. Chairman, I thank the gentlewoman for yielding time to me.

Mr. Chairman, I rise in strong support of the amendment. The cap on punitive damages is one of the most antiwomen extreme Republican measures introduced this year. It must be removed.

Contraceptives, breast implants, and other pharmaceutical products have been put on the market, and later found to cause very serious injury to millions of women. Punitive damages are often the only thing that saves millions of others.

A. H. Robbins implanted over 2 million women with Dalkon Shields—even though the company knew that they could develop a life-threatening uterine infection. After large punitive damage awards, they quickly pulled the IUD from the market.

Juries award punitive damages when manufacturers act with extreme recklessness, or conscious disregard of harm. Large awards encourage companies to quickly pull dangerous products from the shelves. They deter others from selling harmful devices.

Punitive damages save lives—often women's lives. I urge my colleagues to vote for this amendment, and remove one of the worst antiwomen measures considered by this Congress.

□ 1615

Ms. FURSE. Mr. Chairman, I yield 1 minute to the gentlewoman from Texas [Ms. JACKSON-LEE].

Ms. JACKSON-LEE. I thank the gentlewoman for yielding this time to me.

Mr. Chairman, I rise to ask the real question as to what we are doing here today. First of all, because I think that we are misleading the American people by saying that by this amendment we are removing the element of protection under punitive damages. The States are already handling this.

What this amendment does is it recognizes needs of women and children, and it particularly helps me to address the questions of Marilyn, a loving grandmother in my district in my hometown of Houston, TX, whose faulty silicon breast implants have caused her total disability and agony.

Marilyn's daughter, Theresa, also suffers from severe neurological disorders that have been passed on to her by her mother. And as Theresa breastfed her three children, Marilyn's 5-year-old granddaughter now shows symptoms of silicon poisoning.

Do we not realize that since 1965 to 1990 there have only been approximately 358 punitive damages cases, and most of them have been overturned? The real question is that we must look at whom we are trying to address, business to business? We are willing to do tort reform and help them, but we are also going to abuse our women and children in the process.

Ms. FURSE. Mr. Chairman, I yield such time as he may consume to the distinguished gentleman from Michigan [Mr. CONYERS].

(Mr. CONYERS asked and was given permission to revise and extend his remarks.)

Mr. CONYERS. Mr. Chairman, I rise in strong support of this important Furse amendment.

Mr. Chairman, one of the most revealing features in the Republican Contract With America is the limit on punitive damages. Because this limit will take away one of the most effective means of protecting Americans from the products that will kill, maim, induce sterility, or otherwise injure.

Of course, the most profound lie being told about punitive damages is that they are awarded too often. The truth is that punitive damages are awarded only in rare cases. Between the years 1965 and 1990, there were just 355 punitive damage awards in product liability cases. Excluding asbestos cases, there were an average of only 11 such awards each year, many of which were reduced on appeal.

In exchange for the rare egregious cases that punitive damages are assessed, there are immeasurable gains in public safety. That's right, this limit on punitive damages to three times economic loss or $250,000 is a massive assault on public safety. I ask you to listen closely and I will tell you why.

Parents of America listen to this. In 1980 a darling 4-year-old girl was permanently maimed with second and third degree burns when her highly flammable pajamas caught fire. She merely reached across the kitchen stove to turn off a timer. Company officials were quoted as saying they new the pajamas were unreasonably flammable, and that making them flame retardant was economically feasible. But they failed to take the steps needed to protect the little girl. It took the

sanction of punitive damages to get the company to act responsibly and make children's pajamas safe.

Women of America remember the crime of super-absorbent tampons and toxic shock. The manufacturers of Playtex's super-absorbent tampons knew, according to the 10th Circuit Court's findings, that their product could increase the risk of toxic shock but, according to the 10th Circuit Court, ''deliberately disregarded studies and medical reports linking high absorbance tampons fibers with increased risk of toxic shock.'' Countless of innocent women suffered. It took $10 million in punitive damages to force Playtex to take the deadly product off the market. This is the type of crime the Republican contract would allow to go unchecked.

Women of America will also remember breast implants that manufacturers knew were not safe. Women were left in wheelchairs, weak, ill, and disabled for life. Punitive damages got these off the market.

And for anyone who likes the outdoors, listen to this. Had this bill been law during the Exxon *Valdez,* the punitive damage limit would have shielded Exxon's liability to just $860 million, the equivalent of 4 minutes of Exxon's annual revenues.

And even worse, the punitive damages limit preempts all State punitive damages laws. This bill will limit punitive damages in State actions for sexual abuse of children [New Jersey Stat. Ann Sec. 26:5C–14], Drunk Driving [Minnesota], for the selling of drugs on minors [Illinois], and for much else at the State level.

This bill's obnoxiousness does not end there. It is patently discriminatory against women as well as middle and low wage earners. That's because punitive damages are calculated by economic damages alone, with noneconomic damages like the loss of reproductive ability being totally discounted. If an insurance executive making $1 million and a middle-class housewife who stays at home taking care of her family are both injured by the same product, the insurance executive would be eligible for $3 million in punitive damages, whereas the housewife eligible for only $250,000, less than 10 percent. This would be so even if the injury resulted in the woman's sterility.

Where is this new majority's commitment to fighting these types of crime. Why such the rhetoric when it comes to stopping crime that occurs in the streets, but not crimes that occur in our commercial relations.

Without this amendment, this bill will severely limit the rights of States trying to stop child sexual abuse, of women whose reproductive organs will be vastly undervalued, of average working Americans who depend on our laws to deter the biggest corporations from injuring us with defective products. I urge support of the amendment.

Ms. FURSE. Mr. Chairman, I yield 1 minute to the gentleman from Massachusetts [Mr. MARKEY].

Mr. MARKEY. I thank the gentlewoman for yielding this time to me.

Mr. Chairman, if we take the case which is before us and we change it just slightly, the business executive who was mowing the lawn and his 15-year-old son or daughter was mowing the lawn and the engine of the lawnmower exploded, blinding the executive, blinding the daughter, the measure of damages now would be, under this punitive new standard, that the executive could collect his $3 million as a punitive damage. The girl, the daughter, could only collect whatever the jury might think she might be entitled to, but capped at her economic worth, which is $5 an hour, which is what her mother or father was paying her to mow the lawn.

The point of a punitive suit being to send a signal to the entire lawnmower industry to fix this engine. Now, who should collect? It should be that little girl, not some socialistic scheme that gives the money back to the States. It should be to that girl who had the courage to bring the case.

Mr. HYDE. Mr. Chairman, I yield 3 minutes to the gentleman from Iowa [Mr. GANSKE].

While Mr. GANSKE is approaching the well, I might add that the case that the gentleman from Massachusetts [Mr. MARKEY] mentioned, the lifetime diminution of earnings for the young girl, would amount to a lot more than what the gentleman has on the chart.

Mr. GANSKE. I thank the Chairman for yielding this time to me.

Mr. Chairman, I rise to speak against the amendment and in support of the bill.

For 2 days now, the opponents of this bill have brought up the issue of breast implants.

Now, although I disagree with their interpretation of the facts, I think the issue of silicon silastic is a good example of why we need a product liability bill.

There has been a tremendous amount of disinformation on this issue. I can speak from personal experience. My mother had breast cancer when she was 23 years old. She had a breast reconstruction about 8 years ago.

I have personally reconstructed over 200 women who have had mastectomies for cancer.

The science shows a couple of things: First, there is no correlation between silicon implants and cancer. There is no correlation between silicon implants and autoimmune diseases, as attested to by the recent statement by the American College of Rheumatology.

But I think a bigger issue—and we can disagree with these things—but the bigger issue is this: If you get into a situation where a jury is making this kind of decision as to whether a whole class of products will be available or not, then that jury is legislating. And what we have is a situation then where, if we lose, a type of class of medical products, silicon silastic, for example, is the basic material for such things as in-dwelling catheters for cancer patients. It covers cardiac pacemaker batteries, for example. It is a material that makes cerebral spinal fluid shunts for babies who have hydroencephalitis.

The point is that if you have a disagreement on a material, the proper procedure would be for this to go through a regulatory agency process, have a cost-benefit scientific analysis, and if there is a disagreement, then you bring that on to the floor of the legislature to be debated.

I think the issue is really this: that when we get involved with some of the scientific issues, let us go through a regulatory process, debate it on the floor of Congress. But the situation with the punitive damages is that one jury out of 100 will make such a huge award that their action, then, is making a determination for the whole rest of the country in terms of a whole class of products.

That is why I would urge my colleagues to reject this amendment and to vote for the bill.

Ms. FURSE. Mr. Chairman, I would like to close by saying that this is such a simple amendment. In this amendment we are not talking about whether there should be punitive damages. The Speaker who came before me I do not think realizes that for punitive damages you have to prove conscious, flagrant indifference to the safety of others.

What my amendment says is, if you have two cases, two cases with the same injury, the same guilt, you should have the same punishment.

But under H.R. 956, the Republican bill, if you have two cases with the same injury, the same guilt, you get different punishments. Why is that? That is not justice as we know it in America.

I ask people to vote for my amendment. What my amendment says is that every person injured has the right to the same treatment under the law.

I thank the gentleman and yield back.

Mr. HYDE. Mr. Chairman, I yield the remainder of the time to the distinguished gentleman from Wisconsin [Mr. SENSENBRENNER].

Mr. SENSENBRENNER. Mr. Chairman, the people who support this amendment would have everyone believe that unless the amendment is adopted, we are taking away peoples' rights to sue. That is not the case. There is a constitutional right to sue, and even if we wanted to take that away, which we do not, that could not be taken away under the Constitution.

Second, those who support the amendment would have everyone believe that there is a different standard of justice that is applied. That is not true either. The jury makes the determination of economic damages based upon the evidence that is placed before it. That jury cannot discriminate based upon race, based upon age, or based upon gender. It is based upon the evidence that is introduced in that trial and admitted into evidence. And they make the determination on what the economic damages are, and they issue a verdict that will make a plaintiff who has been a victim of the negligence of another, whole.

What we are talking about here is punitive damages which are over and above making the injured party whole,

in placing a cap on those punitive damages. Punitive damages are not intended as compensation, they are intended to be punishment. In the case of Browning Ferris Industries versus Kelso, 1989, all nine members of the Supreme Court of the United States expressed concern regarding punitive damages. Those justices are not extremists, those justices are not Republicans, those justices look at the law in the cases that come before them.

Justice Brennan, who is hardly a rightwing extremist, and countless other members of the Court have stated time and time again that punitive damages are for punishment of aggravated conduct and are a windfall to the plaintiffs.

The impact of such a windfall recovery is both unpredictable and at times substantial, said the court in Newport versus Fall Concerts, 1981. ''Juries assess punitive damages in wholly unpredictable amounts bearing no necessary relation to the actual harm caused,'' said the Supreme Court in Gertz versus Robert Welsh, Inc., 1974.

Let us put some sense in this area. Let us reject the Furse amendment.

The CHAIRMAN. All time has expired.

The question is on the amendment offered by the gentlewoman from Oregon [Ms. FURSE].

The question was taken; and the Chairman announced that the ayes appeared to have it.

RECORDED VOTE

Ms. FURSE. Mr. Chairman, I demand a recorded voter.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 155, noes 272, not voting 7, as follows:

[Roll No. 223]

AYES—155

Abercrombie	English	LaFalce
Ackerman	Eshoo	Lantos
Andrews	Evans	Laughlin
Baldacci	Farr	Levin
Barcia	Fattah	Lewis (GA)
Becerra	Fields (LA)	Lipinski
Beilenson	Filner	Lofgren
Bentsen	Flake	Lowey
Berman	Foglietta	Luther
Bishop	Ford	Maloney
Bonior	Fox	Manton
Borski	Frost	Markey
Brown (CA)	Furse	Mascara
Brown (FL)	Gejdenson	Matsui
Brown (OH)	Gephardt	McDade
Bryant (TX)	Gibbons	McDermott
Clay	Gonzalez	McHale
Clayton	Green	McKinney
Clyburn	Gutierrez	Meehan
Coble	Hall (OH)	Meek
Coleman	Hastings (FL)	Mfume
Collins (IL)	Hefner	Miller (CA)
Collins (MI)	Hilliard	Mineta
Conyers	Hinchey	Minge
Costello	Holden	Mink
Coyne	Hoyer	Moakley
de la Garza	Istook	Murtha
DeFazio	Jackson-Lee	Nadler
DeLauro	Jefferson	Neal
Dellums	Johnson (SD)	Oberstar
Deutsch	Johnson, E. B.	Olver
Dicks	Johnston	Ortiz
Dingell	Kanjorski	Owens
Dixon	Kennedy (MA)	Pallone
Doggett	Kennedy (RI)	Pastor
Doyle	Kennelly	Payne (NJ)
Durbin	Kildee	Pelosi
Engel	Klink	Pomeroy
Poshard	Serrano	Velazquez
Rahall	Skaggs	Vento
Reynolds	Skelton	Visclosky
Richardson	Slaughter	Ward
Rivers	Stark	Waters
Rose	Stokes	Watt (NC)
Roybal-Allard	Studds	Waxman
Rush	Stupak	Williams
Sabo	Tejeda	Wilson
Sanders	Thompson	Wise
Sawyer	Thurman	Woolsey
Schroeder	Torres	Wyden
Schumer	Traficant	Yates
Scott	Tucker	

NOES—272

Allard	Fowler	Meyers
Archer	Frank (MA)	Mica
Armey	Franks (CT)	Miller (FL)
Bachus	Franks (NJ)	Molinari
Baesler	Frelinghuysen	Mollohan
Baker (CA)	Frisa	Montgomery
Baker (LA)	Funderburk	Moorhead
Ballenger	Gallegly	Moran
Barr	Ganske	Myers
Barrett (NE)	Gekas	Myrick
Barrett (WI)	Geren	Nethercutt
Bartlett	Gilchrest	Neumann
Barton	Gillmor	Ney
Bass	Gilman	Norwood
Bateman	Goodlatte	Nussle
Bereuter	Goodling	Obey
Bevill	Gordon	Orton
Bilbray	Goss	Oxley
Bilirakis	Graham	Packard
Bliley	Greenwood	Parker
Blute	Gunderson	Paxon
Boehlert	Gutknecht	Payne (VA)
Boehner	Hall (TX)	Peterson (FL)
Bonilla	Hamilton	Peterson (MN)
Bono	Hancock	Petri
Boucher	Hansen	Pickett
Brewster	Harman	Pombo
Browder	Hastert	Porter
Brownback	Hastings (WA)	Portman
Bryant (TN)	Hayes	Pryce
Bunn	Hayworth	Quillen
Bunning	Hefley	Quinn
Burr	Heineman	Radanovich
Burton	Herger	Ramstad
Buyer	Hilleary	Reed
Callahan	Hobson	Regula
Calvert	Hoekstra	Riggs
Camp	Hoke	Roberts
Canady	Horn	Roemer
Cardin	Hostettler	Rogers
Castle	Houghton	Rohrabacher
Chabot	Hunter	Ros-Lehtinen
Chambliss	Hutchinson	Roth
Chapman	Hyde	Roukema
Chenoweth	Inglis	Royce
Christensen	Jacobs	Salmon
Chrysler	Johnson (CT)	Sanford
Clement	Johnson, Sam	Saxton
Clinger	Jones	Scarborough
Coburn	Kaptur	Schaefer
Collins (GA)	Kasich	Schiff
Combest	Kim	Seastrand
Condit	King	Sensenbrenner
Cooley	Kingston	Shadegg
Cox	Kleczka	Shaw
Cramer	Klug	Shays
Crane	Knollenberg	Shuster
Crapo	Kolbe	Sisisky
Cremeans	LaHood	Skeen
Cunningham	Largent	Smith (MI)
Danner	Latham	Smith (NJ)
Davis	LaTourette	Smith (TX)
Deal	Lazio	Smith (WA)
DeLay	Leach	Solomon
Diaz-Balart	Lewis (CA)	Souder
Dickey	Lewis (KY)	Spence
Dooley	Lightfoot	Spratt
Doolittle	Lincoln	Stearns
Dornan	Linder	Stenholm
Dreier	LoBiondo	Stockman
Duncan	Longley	Stump
Dunn	Lucas	Talent
Edwards	Manzullo	Tanner
Ehlers	Martinez	Tate
Ehrlich	Martini	Tauzin
Emerson	McCarthy	Taylor (MS)
Ensign	McCollum	Taylor (NC)
Everett	McCrery	Thomas
Ewing	McHugh	Thornberry
Fawell	McIntosh	Thornton
Fazio	McKeon	Tiahrt
Fields (TX)	McNulty	Torkildsen
Flanagan	Menendez	Torricelli
Foley	Metcalf	Towns
Upton	Watts (OK)	Wolf
Volkmer	Weldon (FL)	Wynn
Vucanovich	Weldon (PA)	Young (AK)
Waldholtz	Weller	Young (FL)
Walker	White	Zeliff
Walsh	Whitfield	Zimmer
Wamp	Wicker	

NOT VOTING—7

Cubin	Livingston	Rangel
Forbes	McInnis	
Kelly	Morella	

☐ 1646

The Clerk announced the following pairs: On this vote:

Mr. Rangel for, with Mr. Forbes against.

Mr. CHAPMAN and Mr. TORRICELLI changed their vote from ''aye'' to ''no.''

So the amendment was rejected.

The result of the vote was announced as above recorded.

PERSONAL EXPLANATION

Mrs. KELLY. Mr. Chairman, I voted ''nay'' on the Furse amendment to H.R. 956, Common Sense Product Liability and Legal Reform Act, but my vote did not register by the electronic voting device.

PERSONAL EXPLANATION

Mr. MCINNIS. Mr. Chairman, I was unable to vote on rollcall Vote No. 223 because I was serving as the chairman pro tem of the Committee on Rules, during this vote. Had I been present, I would have voted ''no'' on the amendment offered by Representative FURSE.

The CHAIRMAN. It is now in order to consider amendment No. 8 printed in House Report 104–72.

AMENDMENT OFFERED BY MR. HYDE

Mr. Chairman, I offer an amendment at the desk, made in order under the rule.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. HYDE: Page 3, line 12, strike ''are'' and insert ''is''.

Page 3, line 15, strike ''protect'' and insert ''project''.

Page 3, line 23, strike ''and is costing'' and insert ''causing''.

Page 4, line 18, strike ''transactions'' and insert ''transaction''.

Page 8, beginning in line 2, strike ''Except as provided in subsection (c) in'' and insert ''In''.

Page 8, line 11, strike ''the'' and insert ''a''.

Page 18, redesignate subsection (e) as subsection (f) and insert after line 16 the following:

(e) EXCEPTION.—

(1) REASONABLE CARE.—A failure to exercise reasonable care in selecting among alternative product designs, formulations, instructions, or warnings shall not, by itself, constitute conduct that may give rise to punitive damages.

(2) AWARD OF OTHER DAMAGES.—Punitie damages may not be awarded in a product liability action unless damages for economic and noneconomic loss have been awarded in such action. For purposes of this paragraph, nominal damages do not constitute damages for economic and noneconomic loss.

Page 18, line 17, strike ''CONSIDERATION'' and insert ''CONSIDERATIONS''.

Page 29, in lines 8 and 12, strike ''has'' and insert ''has or should have''.